

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

-against-

WESTWOOD DESIGN/BUILD INCORPORATED,  
DAVID R. WARFIELD, NATIONAL CITY  
MORTGAGE INC., and PENN LYON HOMES  
CORPORATION,

Defendants.

Civil Action  
Docket No. 08 CV00539 (LAK)(HBP)

**DECLARATION IN  
OPPOSITION TO MOTION  
TO VACATE JUDGMENT  
AND FOR OTHER RELIEF  
AND TO ORDER TO SHOW  
CAUSE TO STAY  
ENFORCEMENT**

NATIONAL CITY MORTGAGE,

Third-Party Plaintiff,

-against-

MICHAEL CONRAD a/k/a MICHAEL CONRAD  
BROWN,

Third-Party Defendant.

-----X

BERNARD KOBROFF, pursuant to 28 U.S.C. 1746, under the penalties of  
perjury declares that the foregoing is true and correct:

1. I am an attorney admitted to practice in this Court and am associated with  
the law firm of Goetz Fitzpatrick LLP, attorneys for the plaintiff, Quantum Corporate  
Funding, Ltd. ("Quantum"), in the above captioned matter.

2. I make this Declaration in opposition to: (a) the Motion of defendant Penn  
Lyon Homes Corporation ("Penn") for orders: (i) vacating the final judgment entered  
against defendant Penn on Quantum's motion for summary judgment; (ii) upon vacatur  
denying Quantum's motion for summary judgment; (iii) granting reconsideration of the

court's grant of summary judgment to Quantum and, upon reconsideration, denial of Quantum's motion; (iv) alternatively, granting Penn an extension of time to file opposition to Quantum's motion for summary judgment; and (v) alternatively, adjourning Quantum's motion to allow Penn to engage in discovery so that it may oppose Quantum's motion; and (b) the Order to Show Cause of Penn for orders: (i) permanently staying enforcement of the judgment; and (ii) staying all discovery pending the determination of Penn's motion to vacate and other relief.

3. On July 3, 2008 Quantum moved this court for summary judgment against defendant Penn in the amount of \$112,168.28, with applicable interest, which amount Penn either converted and/or was unjustly enriched by when Quantum wired said amount in payment for the Pollydore Residence and Penn neither applied the monies to that purpose, nor shipped the Pollydore Residence, nor returned the monies to Quantum. Annexed hereto as Exhibit "1" is a copy of Quantum's Statement Pursuant to Local Rule 56.1 which was submitted in support of its motion. Annexed as Exhibit "2" is a copy of the Affidavit of Craig Sheinker, with exhibits, sworn to July 3, 2008, which was also submitted in support of Quantum's motion. Annexed as Exhibit "3" is a copy of Quantum's Memorandum of Law which was also submitted in support of its motion.

4. On July 7, 2008, this court granted defendant/third-party plaintiff National City Mortgage ("NCM") judgment by default against defendants Westwood Design/Build Incorporated ("Westwood") and David Warfield ("Warfield") and against third-party defendant Michael Conrad a/k/a Michael Conrad Brown ("Conrad") "jointly and severally, in the amount equal to any loss, liability or expense that may be imposed

upon, or incurred by NCM on account of plaintiff Quantum Corporate Funding, Ltd.'s claim against NCM". A copy of this default judgment is annexed as Exhibit "4".

5. On July 30, 2008, this court granted Quantum judgment by default against defendants Westwood and Warfied "jointly and severally, in the amount of \$347,000.00." A copy of the Court's order and judgment are annexed as Exhibit "5".

6. On July 30, 2008, this court also on default, granted Quantum's motion for summary judgment against Penn. A copy of the court's order is annexed as Exhibit "6".

7. On July 31, 2008, the clerk entered final judgment against Penn. A copy of this final judgment is annexed as Exhibit "7".

8. On July 31, 2008, defendant Penn's counsel, Scott H. Goldstein, Esq., "submitted a letter to the Court which explained the reasons for the delay, attached the consent stipulation to extend time to answer, and requested an out of time extension of defendant's time to respond to Quantum's motion for summary judgment." A copy of Mr. Goldstein's letter is annexed as Exhibit "O" to his August 5, 2008 Affirmation submitted in support of Penn's motion to vacate and for other relief.

9. In response to Mr. Goldstein's letter, declarant on August 1, 2008 submitted a letter to the court "to set forth the facts from Quantum's side". A copy of Declarant's letter is annexed as Exhibit "8".

10. On August 8, 2008, the court temporarily restrained Quantum's enforcement of the default judgment entered against Penn. A copy of the court's order is annexed as Exhibit "9".

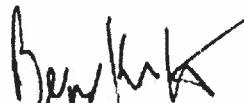
11. On August 7, 2008, pursuant to counsels' conference with Magistrate Judge Henry Pittman, plaintiff Quantum responded to Penn's document demands and

interrogatory requests and its counsel, Mr. Goldstein, attended and questioned Quantum's employees, Maria DeSouza and Craig Sheinker, whose depositions Penn noticed.

12. On August 8, 2008, Quantum's President, Craig Sheinker, was deposed by defendants' Penn and NCM's attorneys. A copy of Mr. Sheinker's deposition is annexed as Exhibit "10".

13. As regards Penn's motions, it is emphasized that: (a) Penn is "conceding (for the purpose of this motion only) that all of the facts contained in plaintiff's motion were undisputed" (Penn Memo of Law, p.2); (b) Penn has not submitted any affidavit from anyone with personal knowledge of the facts which presents evidence of any facts which if proven at trial would constitute a complete defense to Quantum's unjust enrichment and/or conversion causes of action; (c) Penn has not alleged that it has a complete defense to Quantum's causes of action; (d) Penn has not stated what, if anything, it expected to "discover" that would constitute a complete defense to Quantum's summary judgment motion; and (e) Penn's motion to stay discovery is moot.

Dated: New York, New York  
August 18, 2008

  
\_\_\_\_\_  
Bernard Kobroff (BK 0101)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

QUANTUM CORPORATE FUNDING, LTD., Civil Action  
Docket No. 08 CV00539(LAK)(HBP)  
Plaintiff,

-against-

WESTWOOD DESIGN/BUILD  
INCORPORATED, DAVID B. WARFIELD,  
NATIONAL CITY MORTGAGE INC., and  
PENN LYON HOMES CORPORATION,

Defendants.

-----X

NATIONAL CITY MORTGAGE,

Third-Party Plaintiff,

-against-

MICHAEL CONRAD, a/k/a MICHAEL CONRAD  
BROWN,

Third-Party Defendant.

-----X

Plaintiff, Quantum Corporate Funding, Ltd ("Quantum"), contends that there is no genuine issue to be tried as to the following material facts:

1. Plaintiff Quantum is a corporation organized and existing under the laws of the State of New York, maintaining its principal place of business at 1140 Avenue of the Americas, New York, New York 10036 and is engaged in the business of commercial finance. Affidavit of Craig Sheinker, sworn to July 3, 2008 (hereafter "Sheinker Affidavit"), para. 3 and Exhibit J, para. 1.

2. Defendant Westwood Design/Build Incorporated ("Westwood") is a corporation organized and existing under the laws of the State of Maryland maintaining its principal place of business at 12109 Gordon Avenue, Beltsville, Maryland 20705. Sheinker Affid. Exs. A and J, para. 2.

**STATEMENT PURSUANT  
TO LOCAL RULE 56.1**

3. Defendant National City Mortgage Inc. ("National") is a corporation organized and existing under the laws of the State of Ohio, maintaining its principal place of business at 3232 Newmark Drive, Miamisburg, Ohio 45342. Sheikner Affid. Ex. J, para. 4.

4. Defendant Penn Lyon Homes Corporation ("Penn") is a corporation organized and existing under the laws of the State of Pennsylvania, maintaining its principal place of business at 195 Airport Road, Selinsgrove, Pennsylvania 17870. Sheinkner Affid. Ex. J, para. 5 and Ex. K, para. 5.

5. In or about January, 2007 Mr. and Mrs. Eustace Pollydore, as owners, entered into contracts with defendant Westwood, as contractor, and with defendant National, as construction lender, pursuant to which Westwood contracted to construct a new home at 6117 Elm Street, Lanham, Maryland for the Pollydores (the "Pollydore Residence"). Sheinkner Affid. para. 4 and Exhibits A and B.

6. By virtue of the work and materials allegedly furnished by Westwood for the Pollydore Residence there became due to Westwood from National pursuant to the second draw-down on the Pollydore construction loan the sum of \$347,000.00 for which an invoice was rendered by Westwood to National (the "Invoice"). Sheinkner Affid. para. 5 and Exhibits B and C.

7. In or about December, 2007, in order to induce Quantum to purchase the Invoice and in payment thereof to wire \$130,731.72 to Westwood and \$112,168.28 to Penn, Westwood forged an invoice allegedly from Penn in the amount of \$112,168.28, allegedly in payment for the construction of the modular Pollydore Residence. Sheinkner Affid. paras. 11 and 17 and Ex. G and Ex. K, paras. 37-44.

8. Westwood made an assignment to Quantum of the moneys due it from National on account of the Invoice (the "Assignment"). Sheinker Affid. para. 10 and Exhibit E.

9. Pursuant to Westwood's Assignment on December 21, 2007, Quantum wired from its account at Sterling National Bank to Penn's account No. 40224230 at Omega Bank, \$112,168.28 in payment for the "Pollydore Residence." Sheinker Affid. para. 11 and Exs. E, F, G, H and K para. 41.

10. Penn's Account No. 40224230 received the \$112,168.28 wire transfer from Quantum on or about December 24, 2007. Sheinker Affid. Exs. H and K para. 41.

11. Penn had no contract with Westwood to supply the Pollydore Residence. Sheinker Affid. para. 17 and Ex. K, para. 39.

12. Penn did not credit the \$112,168.28 received from Quantum against the Pollydore Residence. Sheinker Affid. Ex. K, para. 43.

13. Notwithstanding Penn's receipt of the \$112,168.28 from Quantum in payment for the Pollydore Residence, Penn never shipped the Pollydore Residence. Sheinker Affid. paras. 17 and 19 and Ex. K, paras. 39, 43 and 44.

14. Notwithstanding Penn's receipt of the \$112,168.28 from Quantum in payment for the Pollydore Residence, Penn credited the \$112,168.28 against monies owed it by Westwood for the "Harris Residence". Sheinker Affid. paras. 11, 16 and 17 and Ex. K, paras. 42-44.

15. On January 15, 2008, Quantum demanded that Penn return the \$112,168.28 it had received in payment for the Pollydore Residence. Sheinker Affid. para. 18 and Ex. I.

16. Penn refused and continues to refuse to uncredit the \$112,168.28 received from Quantum which it credited to the Harris Residence and to return the \$112,168.28 to

Quantum. Sheinker Affid. para. 20 and Ex. J.

Dated: New York, New York  
July 3, 2008

GOETZ FITZPATRICK LLP

By:

  
Bernard Kobroff (BK 0101)  
Attorneys for Plaintiff  
Quantum Corporate Funding, Ltd.  
One Penn Plaza, Suite 4401  
New York, New York 10119  
(212) 695-8100

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
QUANTUM CORPORATE FUNDING, LTD.,

Civil Action  
Docket No. 08 CV00539(LAK)(HBP)

Plaintiff,

-against-

WESTWOOD DESIGN/BUILD  
INCORPORATED, DAVID B. WARFIELD,  
NATIONAL CITY MORTGAGE INC., and  
PENN LYON HOMES CORPORATION,

Defendants.

-----X  
**AFFIDAVIT IN SUPPORT  
OF MOTION FOR  
SUMMARY JUDGMENT**

NATIONAL CITY MORTGAGE,

Third-Party Plaintiff,

-against-

MICHAEL CONRAD, a/k/a MICHAEL CONRAD  
BROWN,

Third-Party Defendant.

-----X

CRAIG SHEINKER, being duly sworn, deposes and says:

1. I am the President of Quantum Corporate Funding, Ltd. ("Quantum"), the plaintiff herein, have examined Quantum's records and have personal knowledge of the facts and circumstances hereinafter set forth and submit this Affidavit in support of Quantum's motion for summary judgment against defendant Penn Lyon Homes Corporation ("Penn") in the amount of \$112,168.28 together with interest from January 15, 2008.

2. Quantum seeks in this action to recover from defendant Penn the sum of \$112,168.28 of Quantum's monies which Penn either converted and/or was unjustly enriched by, when Quantum wired said sum in payment for the Pollydore's Residence

and Penn neither applied the monies to that purpose, nor shipped the goods, nor returned the monies to Quantum.

#### BACKGROUND

3. Quantum is in the business of accounts receivable factoring. Headquartered in New York City, New York. Quantum is one of the largest purchasers of contractor receivables in the United States.

4. On or about January, 2007, Mr. and Mrs. Eustace Pollydore, as owners, entered into contracts with defendant Westwood Design/Build Incorporated (“Westwood”), as contractor, and with defendant National City Mortgage Inc. (“National”) as construction lender, pursuant to which Westwood contracted to construct a new home for Mr. and Mrs. Pollydore at 6117 Elm Avenue, Lanham, Maryland (the “Pollydore Residence”). A copy of the Westwood/Pollydore contract is annexed hereto as Exhibit “A”. A copy of National/Pollydore construct loan agreement is annexed hereto as Exhibit “B”.

#### THE TRANSACTION

5. In 2007, defendant Westwood, by defendant David R. Warfield (“Warfield”) approached Quantum to obtain cash by selling Quantum an account receivable. To implement this arrangement, Westwood, by Warfield, offered to assign to Quantum a \$347,000.00 invoice (the “Invoice”) which it represented was monies due it from defendant National pursuant to its second draw-down of the Pollydore’s construction loan. A copy of the Westwood Invoice to National is annexed hereto as Exhibit “C”. The construction loan draw-down schedule is annexed as part of Exhibit “B”.

6. Since Quantum has no independent way of knowing if the contractor offering to sell its accounts receivable has, in fact, performed work and furnished materials of the amount invoiced, Quantum contacts the account debtor, in this case the construction lender, defendant National, and requests from the account debtor, a written acknowledgment of and an estoppel certificate for the debt.

7. Accordingly, in December 2007, Quantum contacted defendant National's Branch Manager, Christopher Washburn, at National's office in Greenbelt, Maryland, and requested confirmation that the Invoice (Exhibit "C" hereto) was correct, forwarding to defendant National an estoppel certificate covering the Invoice.

8. In response, defendant National, by its Mr. Washburn, signed the estoppel certificate in the amount of the \$347,000.00 second draw-down of the Pollydore construction loan and returned it to Quantum. A copy of the estoppel certificate executed by defendant National, citing Westwood's Invoice, is annexed hereto as Exhibit "D".

9. In reliance upon defendant National's estoppel certificate, Quantum agreed to purchase the Invoice.

10. The assignment of the Invoice by Westwood to Quantum was made by an agreement entitled Purchase & Sale Agreement (the "Agreement"). A copy of the Agreement is annexed hereto as Exhibit "E".

11. Pursuant to the Agreement, on December 21, 2007, Quantum paid defendant Westwood \$242,900.00 for the Invoice pursuant to Westwood's, by defendant Warfield's, specific instructions, by wiring: (a) \$130,731.72 to Westwood and; (b) wiring \$112,168.28 to defendant Penn, in payment of Penn's invoice No. 850 representing the balance outstanding on its shipment of the "Pollydore Residence". A copy of Westwood's wiring instructions to Quantum is annexed hereto as Exhibit "F". A copy of

the Penn "Pollydore Residence" Invoice No. 850 is annexed hereto as Exhibit "G". A copy of Quantum's wire transfers to Westwood and to Penn are annexed hereto as Exhibit "H".

12. In early January 2008, Quantum contacted defendant National's main office in Miamisburg, Ohio to confirm that pursuant to the assignment payment of the Invoice would be made by National directly to Quantum, as assignor, rather than to assignee Westwood.

13. Additionally, Quantum attempted to contact defendant Westwood to advise it that if defendant National paid the Invoice to it, instead of to Quantum, that the payment was required to be turned over to Quantum.

14. However, despite several attempts to reach Westwood by telephone, Quantum was unable to make contact with Westwood and this raised concerns.

**THE FRAUD AND PENN REFUSES TO RETURN THE PAYMENT OR SHIP  
THE POLLYDORE RESIDENCE**

15. Quantum then contacted the Pollydores' and was advised by Mrs. Pollydore that not only had the residence not been set on the foundation, but that there was no foundation and that no materials had been delivered to the site.

16. After receiving this information, I contacted defendant Westwood's supplier, defendant Penn, to confirm that it had in fact shipped Mr. and Mrs. Pollydore's modular home for which Quantum had paid it.

17. Defendant Penn advised me on January 11, 2008 that: (a) it had never heard of Pollydore; (b) had not shipped the Pollydore Residence, and; (c) that the \$112,168.28 Penn invoice No. 850 (Exhibit "G") which Quantum had paid was fictitious.

18. On January 15, 2008, by e-mail, I demanded that defendant Penn return to Quantum the \$112,168.28 which Quantum had wired in payment for the Pollydore

Residence. A copy of my January 15, 2008 e-mail to Penn's President, David Reed, demanding the immediate return of the \$112,168.28 is annexed hereto as Exhibit "I".

19. Notwithstanding my aforesaid demand and further conversations between defendant Penn and Quantum's attorney, Charles A. Shea, III, Esq., of Wetzel, Caverly, Shea, Phillips & Rodriguez, Penn refused to either return the \$112,168.28 to Quantum or to ship the Pollydore Residence.

20. As a result, Quantum amended its Complaint herein to add Penn as a defendant asserting against it claims for conversion and unjust enrichment. A copy of Quantum's Corrected Amended Complaint is annexed hereto as Exhibit "J".

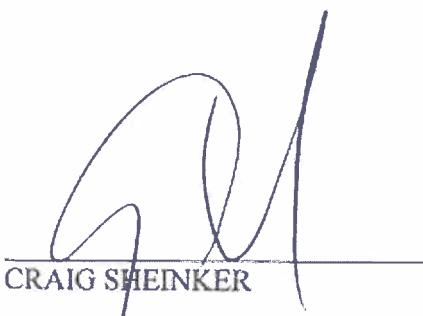
21. A copy of defendant Penn's Answer, wherein it admits in pertinent part that:

- (a) "Penn Lyon has never entered into any contracts or transactions with Westwood or Warfield for the production and manufacture of modular custom-built home units to be delivered to 6117 Elm Street, Lanham, Maryland on property owned by Mr. and Mrs. Eustace Pollydore (the "Pollydore Project")" (para. 39); and
- (b) On or about December 24, 2007, Penn Lyon received a wire transfer in the amount of \$112,168.12 (sic)...” (para. 41);

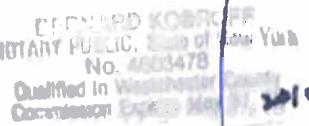
but denies that it either converted Quantum's \$112,168.28 transfer to it and/or was unjustly enriched by that transfer (paras. 16 and 18), is annexed hereto as Exhibit "K".

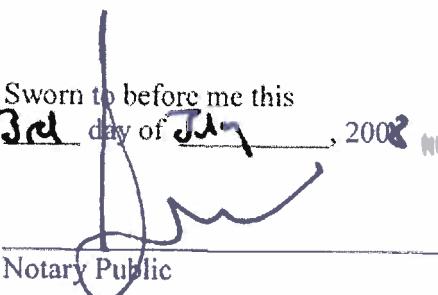
22. Notwithstanding defendant Penn's denials, the undisputed facts evidence that Quantum on December 21, 2007 wired \$112,168.28 from its account at Sterling National Bank to Penn Lyon's account at Omega Bank in payment for the "Pollydore Residence" and that at no time did Penn either credit that payment to the "Pollydore Project" (Exhibit "K" para. 39) or ship the Pollydore Residence or return Quantum's \$112,168.28, despite Quantum's demand for its return.

**WHEREFORE**, I respectfully request that the Court grant this motion, as well as such other and further relief as may be just and proper.

  
CRAIG SHEINKER

Sworn to before me this  
3rd day of July, 2008

  
EDWARD KOBROFF  
NOTARY PUBLIC, State of New York  
No. 4603478  
Qualified in Washington County  
Commission Expires March 2010

  
Notary Public

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A



## CONTRACT

THIS AGREEMENT, Made as of December 18<sup>th</sup>, In the Year of 2006,

Between the Owner: **Mr. & Mrs. Eustace Pollydore**  
**5300 Gallatin Street**  
**Hyattsville, MD 20781**  
**301-277-1455**

And the Contractor: **Westwood Design/Build Incorporated**  
**License # 16054316**  
**P.O. Box 105**  
**Beltsville, MD 20704**  
**301-813-2626 Office**  
**301-937-2359 Fax**

For the Project: **New Home Construction**  
**6117 Elm Street**  
**Lanham, MD 20706**

Construction Lender: **National City Mortgage**

### ARTICLE 1. CONTRACT DOCUMENTS

1.1 The contract documents consist of this agreement, general conditions, construction documents, specifications, allowances, finish schedules, construction draw schedule, all addenda issued prior to execution of this agreement and all change orders or modifications issued and agreed to by both parties. All documents noted herein shall be provided to the Contractor by the Owner. These contract documents represent the entire agreement of both parties and supersede any prior oral or written agreement.

### ARTICLE 2. SCOPE OF WORK

2.1 The Owner agrees to purchase and the Contractor agrees to construct the above mentioned structure and fixtures attached thereto in Lanham, county of Prince George's in the state of Maryland according to the construction documents, allowances, finish schedules, all addenda, change orders, modifications and specifications set forth in the specification booklet.

### ARTICLE 3. TIME OF COMPLETION

3.1 The approximate commencement date of the project shall be January 1<sup>st</sup>, 2007. The approximate completion date of the project shall be August 31<sup>st</sup>, 2007, however, building permits and any change orders and/or unusual weather might delay or otherwise affect the completion date. Barring inclement weather, factory delays or owner related delays, the Contractor shall complete the home within 3 months upon receipt of the building permit. The contract execution date shall be December 19<sup>th</sup>, 2006.

### ARTICLE 4. THE CONTRACT PRICE

4.1 The construction contract shall be calculated on a cost plus coordination basis, with all labor, materials, permits and insurance figured as costs.

Initiated by: Owner  1  
Contractor 

**4.2** Pre-construction estimates for construction costs and coordination are **Three-Hundred-Twelve-Thousand, Eight-Hundred-Fifty (\$312,850.00)**, Closing costs shall be paid by the Owner.

## **ARTICLE 5. PROGRESS PAYMENTS**

**5.1** The Owner will make payments to the contractor through four (4) separate draws based on invoices for labor, materials and modular units submitted.

|                        |  |                                      |
|------------------------|--|--------------------------------------|
| Lot Premium            | \$ 149,000.00  | .26 Acre / 11,200 Sq/Ft Lot Purchase |
| Builder Deposit:       | 10% of the Construction Cost is required when Prince Georges County releases permit. |                                      |
| Foundation Draw:       | 20% of the Construction Cost is required at foundation completion.                   |                                      |
| Modular Home Set:      | 60% of the Construction Cost is required at Modular Delivery and Set.                |                                      |
| Finishing and Closing: | 10% of the Construction Cost is required at punch-out completion.                    |                                      |

Owner shall make payments to contractor within **5 business days** after approved inspection by owner. Inspection by Owner must correspond with Addendum A attached. Should the owner fail to make payment, contractor may charge a penalty of **18%** annually upon the unpaid amount until paid.

**5.2** If payment is not received by the Contractor within **10** days after delivery of payment demand for work satisfactorily completed, contractor shall have the right to stop work or terminate the contract at it's option. Termination by Contractor under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination. Termination by Owner under the provisions of this paragraph shall not relieve the Owner of the obligations of payments to Contractor for that part of the work performed prior to such termination.

## **ARTICLE 6. DUTIES OF THE CONTRACTOR**

- 6.1** All work shall be in accordance to the provisions of the plans and specifications. All systems shall be in good working order.
- 6.2** All work shall be completed in a workman like manner, and shall comply with all applicable national, state and local building codes and laws.
- 6.3** All work shall be performed by licensed individuals to perform their said work, as outlined by law.
- 6.4** Contractor shall obtain all permits necessary for the work to be completed. The contractor is required to pay any and all impact fees charged by Prince George's County.
- 6.5** Contractor shall remove all construction debris and leave the project in a broom clean condition.
- 6.6** Upon satisfactory payment being made for any portion of the work performed, Contractor shall furnish a full and unconditional release from any claim or mechanics' lien for that portion of the work for which payment has been made.

## **ARTICLE 7. OWNER**

- 7.1** The Owner shall communicate with subcontractors only through the Contractor.
- 7.2** The Owner will not assume any liability or responsibility, nor have control over or charge of construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the project, since these are solely the Contractor's responsibility.
- 7.3** Contractor shall provide all engineering and surveying required by Prince George's County.
  - a. Horizontal and Vertical Control
  - b. Topography
  - c. Boundary Survey
  - d. Site Grading and Landscape Plan
  - m. Public Water/Sewer Connection
  - e. Stormwater Management Plan
  - f. Sediment Control Plan
  - g. Utility Coordination
  - h. TCP Waiver
  - n. Geotechnical Report
  - i. Limits of Disturbance
  - j. Foundation Stake Out
  - k. Wall Check
  - l. All Certifications

7.4 Contractor shall obtain all construction permits necessary for the work to be completed.

7.5 Contractor shall build access road, per Prince Georges County specification, to Owner's parcel.

#### **ARTICLE 8. CHANGE ORDERS AND FINISH SCHEDULES**

8.1 A Change Order is any change to the original plans and/or specifications. All change orders need to be agreed upon in writing, including cost, additional time considerations, approximate dates when the work will begin and be completed, a legal description of the location where the work will be done and signed by both parties. 50% of the cost of each change order will be paid prior to the change, with the final 50% paid upon completion of the change order. A 12% fee shall be added to all change orders and overages in excess of initial allowances. Additional time needed to complete change orders shall be taken into consideration in the project completion date. **NO CHANGE ORDERS WILL BE ACCEPTED AFTER FINAL HOME ARCHITECTURAL DRAWINGS HAVE BEEN REVIEWED AND APPROVED BY THE OWNER.**

8.2 Completed Finish Selection Schedules shall be submitted to the Contractor as follows:

8.2.1 Schedule #1 within four weeks after site clearing begins.

8.2.2 Schedule #2 within eight weeks after site clearing begins.

8.3 Any delays or changes in finish selection schedules will delay the projected completion date.

#### **ARTICLE 9. INSURANCE**

9.1 The Owner will keep in force a Builder's Risk Insurance Policy on the said property to protect both owner's and contractor's interests until construction is completed. The Owner will maintain property insurance to the full and insurable value of the project, in case of a fire, vandalism, malicious mischief or other instances that may occur.

9.2 The Contractor shall purchase and maintain needed Workman's Compensation and Liability insurance coverage as required by law and deemed necessary for his own protection.

#### **ARTICLE 10. GENERAL PROVISIONS**

10.1 If conditions are encountered at the construction site which are subsurface or otherwise concealed physical conditions or unknown physical conditions of an unusual nature, which differ naturally from those ordinarily found to exist and generally recognized as inherent in construction activities, the Owner will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, and/or time required for, performance of any part of the work, will negotiate with the Contractor an equitable adjustment in the contract sum, contract time or both.

#### **ARTICLE 11. HAZARDOUS MATERIALS, WASTE AND ASBESTOS**

11.1 Both parties agree that dealing with hazardous materials, waste or asbestos requires specialized training, processes, precautions and licenses. Therefore, unless the scope of this agreement includes the specific handling, disturbance, removal or transportation of hazardous materials, waste or asbestos, upon discovery of such hazardous materials the Contractor shall notify the Owner immediately and allow the Owner/Contractor to contract with a properly licensed and qualified hazardous material contractor. Any such work shall be treated as a Change Order resulting in additional costs and time considerations.

#### **ARTICLE 12. ARBITRATION OF DISPUTES**

12.1 Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

#### **ARTICLE 13. WARRANTY**

13.1 At the completion of this project, Contractor shall execute an instrument to Owner warranting the project for 10 Years against defects in workmanship or materials utilized. The manufacturers warranty will prevail. No legal action of any kind relating to the project, project performance or this contract shall be initiated by either party against the other party after 10 Years beyond the completion of the project or cessation of work.

**ARTICLE 14. TERMINATION OF THE CONTRACT**

- 14.1** Should the Owner or Contractor fail to carry out this contract, with all of its provisions, the following options and stipulations shall apply:
- 14.1.1** If the Owner or the Contractor shall default on the contract, the non-defaulting party may declare the contract is in default and proceed against the defaulting party for the recovery of all damages incurred as a result of said breach of contract, including a reasonable attorney's fee. In the case of a defaulting Owner, the Earnest money herein mentioned shall be applied to the legally ascertained damages.
- 14.1.2** In the event of a default by the Owner or Contractor, the non-defaulting party may state his intention to comply with the contract and proceed for specific performance.
- 14.1.3** In the case of a defaulting Owner, the Contractor may accept, at his option the earnest money as shown herein as liquidated damages, should earnest money not cover the expenses to date, the Contractor may make claim to the Owner for all work executed and for proven loss with respect to equipment, materials, tools, construction equipment and machinery, including reasonable overhead, profit and damages applicable to the property less the earnest money.

**ARTICLE 15. ATTORNEY FEES**

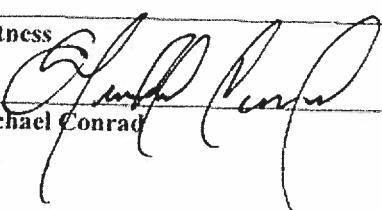
- 15.1** In the event of any arbitration or litigation relating to the project, project performance or this contract, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

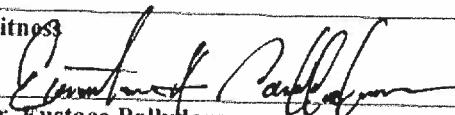
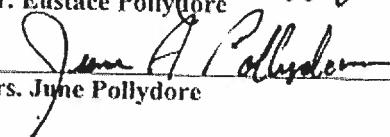
**ARTICLE 16. ACCEPTANCE AND OCCUPANCY**

- 16.1** Upon completion, the project shall be inspected by the Owner and the Contractor, and any repairs necessary to comply with the contract documents shall be made by the Contractor.
- 16.2** The Owner shall not occupy the property until final payment has been received by the Contractor and a Certificate of Occupancy has been obtained.
- 16.3** Occupancy of the project by the Owner in violation of Article 16.2, shall constitute unconditional acceptance of the project and a waiver of any defects or uncompleted work.

WITNESS our hand and seal on this 17<sup>th</sup> day of January, 2007.

Signed in the presence of:

Witness  
  
 Michael Conrad

Witness  
  
 Mr. Eustace Pollydore  
  
 Mrs. June Pollydore

**B**

# National City Mortgage

## Modular Home (delivered to site) Draw Schedule

Owner: Pollydore #0005351534

20% Foundation complete. Well is drilled and acceptable. \$ 99,200.00

70% Payment of modular package, delivery to site.  
Unit to be removed from truck and/or trailer  
set on foundation. \$ 347,200.00

Completion of permanent roof, windows set in place, all exterior doors hung, exterior walls complete, interior drywall complete, taped and spackled, all interior carpentry complete, kitchen cabinets and all fixtures have been set, deck complete and insulation installed.

10% Exterior Siding Complete \$ 49,600.00

Final seaming of carpeting and/or flooring walls completed, finishing touches regarding fixtures and kitchen cabinets completed, septic tank installed. Dwelling complete. Driveway, rough grading and top soil complete. All owner responsibilities MUST be completed.

Builder/Contractor:

Signature

Borrower(s):

Jane A. Pollydore  
Owner

Justine A. Pollydore  
Borrower

Please allow at least 10 business days after closing before contacting NCM's Draw Department for your first draw.

A Division of National City Bank of Indiana

Case 1:08-cv-00539-LAK-HBP Document 65-3 Filed 08/20/2008 Page 14 of 19  
NDU-08-2007 12:22PNMC a division of  
National City Bank

11/08/2007

JUNE A POLLYDORE  
 EUSTACE A POLLYDORE  
 5300 GALLATIN STREET  
 HYATTSVILLE, Maryland 20781

We are pleased to inform you that your application for a Construction/Permanent first mortgage loan on the property located at 6117 KIM ST, LANHAM, Maryland 20706 has been approved subject to the terms and conditions presented in this Commitment.

#### Summary of Terms and Conditions:

You have elected:

- A Fixed Rate Mortgage with interest rate limitations as set forth in your Construction/Permanent Capped Floating Rate Agreement.
- A Fixed Rate Mortgage with interest rate lock.
- An Adjustable Rate Mortgage as set forth in the Adjustable Rate Mortgage Program Disclosure you were provided.

The term of this loan includes a set period of time to complete construction of the premises. You will pay interest only on principal amounts disbursed during the construction period. Payments on your permanent loan will not begin until the earlier of completion of the premises or the set period for construction completion.

Construction draws will be made in accordance with the Construction Loan Agreement provided for your signature at the loan closing. You must deposit with us, at the time of closing, the difference between the loan funds available and the total cost of the construction. We estimate your deposit will be \$ 9,797.30.

The following are important terms of your loan.

|                       |               |                    |       |
|-----------------------|---------------|--------------------|-------|
| Loan Amount           | \$ 496,000.00 | Loan Type          | CVR   |
| Initial Interest Rate | 7.000         | Loan Sub Type      | Fixed |
| Term of Loan          | 360           | Discount Points    |       |
| Origination Fee       | 1.000         | % Construction Fee |       |

NOV-09-2007 12:22

P.11

## Commitment Letter

Page 2

Estimated Principal and Interest due after completion of construction:

Monthly Payment (P&I) \$ 1,991.87  
Monthly Taxes \$ \_\_\_\_\_  
Monthly Insurance \$ \_\_\_\_\_  
Monthly PMI \$ 247.50

Estimated Total Monthly Payment \$ 4,241.37

If your loan is an Adjustable Rate Mortgage and [ ] if this box is checked, you will have the opportunity to convert your loan to a fixed rate loan for the remainder of your original loan term on the (check as applicable): [ ] first, second, third, fourth and fifth interest rate change date, or [ ] first and second interest change dates if you are not then in default and have not made a payment 30 or more days after the payment due date at any time within the twelve-month period immediately preceding the Change Date.

Additional Conditions of This Commitment to Be Submitted Prior To Closing:

Additional Conditions of This Commitment to Be Presented At Closing:

Other Terms and Conditions of This Commitment:

1. An escrow account for real estate taxes and insurance premiums will be required. Therefore, one-twelfth of the annual payment for these items is to be included in your monthly payment.
2. In the event that there is any change in the property to be mortgaged, your financial condition, or your employment status between the date of application and the final closing of this loan, FNMC a division of National City Bank at its option, may withdraw this commitment.

CONSTRU2

(12/04)

Commitment Letter  
Page 3

3. The loan and the closing shall be in compliance with the requirements of the federal, state and local governments now in effect or hereinafter to be enacted.
4. All documents, mortgages, and other matters connected with this loan shall be subject to our approval in form and in substance, and our decision shall be final and conclusive.
5. The Note, Construction Loan Agreement, Mortgage, Construction/Permanent Loan Agreement and all other documents pertaining to the loan are to be signed by all the Borrower(s) listed above. Therefore, all the Borrower(s) must be present at the time of the closing. Additionally, the seller(s) and/or the Contractor must execute certain documents. If the Seller/Contractor will not be present at the closing, please notify the Closing Agent when you schedule your closing.
6. A completed application must be signed at the time of closing.
7. In order to have a smooth closing of this transaction, the Closing Agent must have the following items at least five (5) banking days prior to the day you wish to close your loan:
  - A. An ALTA Mortgage Title Insurance Commitment, in form and through a company acceptable to us, insuring against loss or damage in the amount of your loan, showing the mortgage to be a good and valid first lien on the property. The policy must insure, in addition to other items, against material and mechanic's liens of record and eliminate survey exceptions. The proposed mortgagee should read \_\_\_\_\_.
  - B. Fire and extended coverage insurance including vandalism and malicious mischief (Builder's Risk coverage) and to cause to be provided to Lender evidence of workers compensation and general liability insurance in the amount, form and in companies satisfactory to the Lender, which insurance shall be payable to Borrower with standard mortgage endorsement attached making loss payable to the Lender or its assigns or mortgagee. A policy must be provided to the closing agent along with evidence that the first year's premium has been paid in full.

## Commitment Letter

Lender reserves the right to refuse to make the loan under the terms and conditions set forth in this commitment where it is discovered that any facts represented by applicant(s) are false in any respect, where any credit reporting information is found to be inaccurate, or where bankruptcy or other laws would prevent or inhibit the Lender's ability to make the requested loan.

THIS COMMITMENT EXPIRES BY MARCH 1, 2008. YOUR LOAN MUST CLOSE ON OR BEFORE THIS DATE. IF YOUR LOAN DOES NOT CLOSE BY THE COMMITMENT EXPIRATION DATE FOR ANY REASON, EVEN REASON BEYOND YOUR CONTROL, OR YOU REQUEST TO CHANGE THE AMOUNT OR ANY OTHER TERMS OF YOUR LOAN, WE MAY CHANGE ANY OF THE TERMS OF YOUR LOAN, INCLUDING INTEREST RATE, POINTS AND FEES OR WE MAY WITHDRAW YOUR COMMITMENT. IF WE ELECT TO EXTEND YOUR COMMITMENT, WE MAY REQUIRE THAT THE INFORMATION NEEDED FOR YOUR APPLICATION BE UPDATED SINCE SUCH INFORMATION IS ONLY VALID FOR NINETY DAYS.

Sincerely,



By: Chris Wachter  
(Type Name)

Title: Branch Manager / VP

C



## **INVOICE**

| Date       | Invoice # |
|------------|-----------|
| 12/18/2007 | 10084     |

**BILL TO:**

National City Mortgage/National City Bank  
Christopher Washburn, Vice President  
9852 Walker Drive, Suite 400  
Greenbelt, MD 20770

**REMIT TO:**

**Westwood Design/Build Inc.  
P.O. Box 105  
Beltsville, MD 20704**

| Terms             | P.O. No.   | PROJECT             |                    |
|-------------------|--|---------------------|--------------------|
| Net 45            |  | Pollydore Residence |                    |
| Quantity          | Description  | Rate                | Amount             |
|                   | Construction Draw<br>Pollydore Module Delivery - #0005351534<br>Curbside Delivery Completed Amount Due and Owing   | 347,000.00<br>0.00  | 347,000.00<br>0.00 |
|                   | <p>This invoice has been sold,<br/>assigned and transferred to:<br/><b>Quantum Corporate Funding, Ltd.</b></p> <p>Make all checks payable and mail to:</p> <p><b>Quantum Corporate Funding, Ltd.</b><br/> <b>11140 Avenue of the Americas, 16th Floor</b><br/> <b>New York, New York 10036</b></p> |                     |                    |
| Modules Delivered | Total  | \$347,000.00        |                    |

**D**

# Quantum Corporate Funding, Ltd.

1140 Avenue of the Americas, 16th Floor

New York, N.Y. 10036

Tel. 212 768-1200

800 352-2585

Fax 212 944-8216

12/18/07

Mr. Christopher Washburn  
 Branch Manager  
 National City Mortgage Company  
 7852 Walker Drive, Suite 400  
 Greebelt, MD 20770

Re: Our Transaction# 25914 Client: Westwood Design Build Incorporated  
 Our Debtor#: 32772. Our Client#: 5999

| Contract/       |                              |             |          |          |                               |
|-----------------|------------------------------|-------------|----------|----------|-------------------------------|
| P.O.#/Contract# | Job# / Project#              | Controller# | P.O.Date | Invoice# | Inv.Date Terms Invoice Amount |
|                 | Project: Polydora Residence. |             | 10094    |          | 12/18/07 45 **** \$347,000.00 |
|                 | Construction Draw, Polydoro  |             |          |          |                               |
|                 | module delivery #0005351534. |             |          |          |                               |

\*\*\*\*\*\$347,000.00

Dear Mr. Washburn:

We are the assignee of payment of the above captioned company. Attached is a letter from it authorizing all payments on the captioned invoices to be sent directly and solely to Quantum Corporate Funding, Ltd.

The undersigned Account Obligor acknowledges to Quantum Corporate Funding, Ltd. that the above invoice Amount(s) are correct and owing by us; that the work and or merchandise has been ordered from and completed by the captioned Client, and accepted by us; that there are not now, nor will there be, any claims, setoffs, or defenses beyond 20% of the Invoice Amount(s); Neither Quantum nor its agents made any representations except as herein set forth. This estoppel is not subject to modification. New York law, jurisdiction and venue shall apply hereto.

Very truly yours,

*Mario Lujza de Souza*

Shelley Simmonds  
 Senior Account Exec.

Agreed & Accepted

Authorized Signature

Account Obligor: National City Mortgage Company  
 Print Name:

Title

*Branch Manager*

E

Transaction# 1001 Client# 4001 Rebate Class 1001 Advt 01  
**PURCHASE & SALE AGREEMENT** \$112,166.28 to Penn Lyon Home Corp.  
\$130,731.72 to Westwood Design  
 In consideration of the sum of \$ 242,900.00 Paid by purchaser to seller,

receipt of which is hereby acknowledged, the undersigned Westwood Design Build Incorporated ("Seller") hereby sells, transfers and assigns to Quantum Corporate Funding, Ltd. ("Purchaser"), its successors and assigns all Seller's right, title and interest in and to Seller's account(s) receivable (including the proceeds of any surety, payment bond or guaranty thereof) owing by various account debtors described in Exhibit "A" attached hereto and made part hereof, together with all rights of action accrued, or to accrue thereon, including, without limitation, full power to collect, sue for, compromise, assign, or in any other manner enforce collection thereof in Purchaser's name or otherwise.

Seller represents, warrants and agrees that:

(a) The Seller is the sole and absolute owner of said account(s), and has full legal right to make said sale, assignment, and transfer, and that said sale, transfer or assignment does not conflict with the terms of any other agreement, or instrument to which Seller is a party.

(b) The correct total amount of said account(s) is \$ 242,900.00.

(c) Said account(s) are presently due and owing to Seller and the amount(s) thereof are not and will not be in dispute; and the payment of said account(s) are not and will not be contingent upon the fulfillment of this, or any other contract(s), past or future.

(d) There are not and will not be any set-offs or counterclaims against said account(s), and said account(s) have not been previously assigned or encumbered by Seller in any manner whatsoever.

(e) Purchaser has right of endorsement on all payments received in connection with said account(s), and Seller hereby appoints Purchaser its attorney in fact for said purpose. In order to accommodate the accounting needs of its clients, Seller hereby directs Purchaser, as agent, to accept and deposit all checks received from Seller's clients whether or not they represent assigned accounts.

(f) Seller will promptly advise Purchaser, in writing, if Seller's place of business and record keeping is changed or a new place is added.

(g) At Purchaser's request, Seller hereby agrees to file a Notice of Mechanics Lien on any real property improvement upon which it has performed labor or furnished materials, the account for which labor and/or materials it has assigned to Purchaser. In the event Seller fails to promptly comply with such request, Seller does hereby constitute and appoint Purchaser as its agent to execute and file in the name of Seller a Notice of Mechanic's Lien to the extent of the debt due from the account debtor for and on account of such labor and material. In connection with the filing of such Notice of Mechanic's Lien, the Seller agrees to periodically advise the Purchaser of the amount or amounts owed by the account debtor in connection with each real improvement so that the Notice of Mechanic's Lien will be accurate in all respects. Seller further agrees not to provide the account debtor with a "Waiver of Right to File a Notice of Mechanic's Lien" without the prior written consent of Purchaser.

(h) Should any of the warranties expressed by Seller be inaccurate and it becomes necessary for Purchaser to utilize an attorney to enforce its rights against Seller, Seller agrees that such attorney fees shall be borne by Seller.

(i) Purchaser further agrees that if the amount referred to in (b) above (or any portion thereof) is not paid by the account debtor(s) thereof for any reason other than a breach of the representations, warranties and covenants contained herein, Seller shall not be liable to repay to Purchaser any amount paid by Purchaser to Seller in consideration of the sale, transfer and assignment herein contained.

(j) Purchaser warrants that it will use its best efforts to collect the amounts due under this agreement and Seller agrees that Purchaser may, in its sole discretion, settle, compromise, or otherwise accept payment of less than the full amount, if in its judgement such action is necessary to effect collection, by reason of a violation of any of the representations and warranties contained in this agreement.

(k) In the event it should become necessary for the Purchaser to enforce its rights hereunder against Seller, the Guarantor(s) or the Account Debtor(s), Seller agrees that Purchaser may apply up to maximum of thirty third and one third (33 1/3%) of clause (b) for Purchaser's attorney's fees therefor.

(l) To secure the representations and covenants made by Seller in this agreement, but not the credit risk of the Account(s), Seller hereby grants to Purchaser a continuing security interest in all personal property and fixtures in which Seller has an interest, now or hereafter existing or acquired, and wheresoever located, tangible or intangible, including but not limited to, all present or hereafter existing or acquired tools, goods, (including without limitation, all equipment), inventory, furniture, receivables, accounts, security agreements, notes, bills, acceptances, instruments, installment paper, chattel paper, documents, certificates of deposit, tax refunds, insurance proceeds, conditional sales or lease contracts, cash or cash equivalents, chattel mortgages or deeds of trust, general intangibles, all intellectual property including, without limitation patents, trademarks and copyrights (and applications for all of the foregoing), contract rights, and all other hypothecation, and promises or duty to pay money, now or hereafter owned or acquired by Seller (including without limitation all rights of Seller as an unpaid vendor), and all proceeds and collections thereof, all guarantees and other security therefor, and all right, title and interest of Seller in any returned repossessed, rejected or un-shipped goods, together with all of Seller's books of accounts, ledger cards and records, all vehicles, all computer programs, and systems owned or operated in connection therewith, all of the above securing present and future advances and all proceeds, products, returns add-ons, accessions and substitutions of and to pay any of the foregoing. Further to this purpose, Seller hereby grants Purchaser and its agents power of attorney to sign its name on any applicable financing statements (UCC-1 and otherwise) in order to effectuate filing(s) on the aforementioned assets of Seller. Upon any default in Seller's representations, warranties, and covenants Purchaser may enforce said security agreement in accordance with the provisions of the Uniform Commercial Code.

(m) No failure or delay on the part of Purchaser in exercising any right power or remedy granted to Purchaser hereunder shall constitute a waiver thereof. No amendment, modification or waiver of, any provision of this Agreement shall be effective unless the same shall be in writing and signed and delivered by Purchaser.

(n) Purchaser shall have the right to deduct the amount of any allowance(s), discount(s), return(s), defences(s), or offset(s) taken by the Account Debtor(s) from any other accounts receivable or other billing rights purchased by Purchaser from Seller or demand reimbursement from Seller based upon representations made by Seller in this agreement as to the Account and Purchaser shall have such other rights and remedies against Seller as shall be available to Purchaser at law or in equity, all of which rights and remedies are hereby expressly reserved.

\uncompletesinpurchase.agt

PLEASE FAX THIS PAGE BACK ALSO

12/20/2007 15:45 4108591196

12/20/2007 17:30 4108132828

WESTWOOD CUSTOM HOME

PAGE 01/02

PAGE 01

12/20/2007 17:30 FAX X11 198 8610

CORPORATE OFFICE

B1003

(g) The Account(s) shall be the property of Purchaser, solely and shall be collected by Purchaser. Due if for any reason any amount(s) thereon should be paid to Seller, Seller shall notify Purchaser immediately of such payment(s), shall hold any check(s), note(s), draft(s), option or other instruments for the payment of money so received in trust for the benefit of Purchaser, and shall pay over such amounts and transmit such check(s) or draft(s) to Purchaser in kind, at its office within 2 days of receipt thereof. SELLER ACKNOWLEDGES THAT FAILURE TO PAY OVER SUCH PAYMENTS WITHIN 5 DAYS TO PURCHASER SHALL BE A BREACH THEREOF AND PURCHASER SHALL CAUSE SELLER TO FORFEIT ANY RIGHTS IT MAY HAVE WITH RESPECT TO ANY OTHER PAYMENT DUE OR TO DECOURT DUE TO SELLER UNDER THIS AGREEMENT.

(h) The paragraphs of this Agreement are severable, and in the event that any paragraph or portion of this Agreement is declared illegal or unenforceable, the remainder of this Agreement will be effective and binding upon the parties.

(i) This Agreement shall be governed by the laws of the State of New York applicable to contracts executed in and to be performed solely within the State of New York. Seller hereby submits, at the election of Purchaser, to personal jurisdiction in the State of New York for the enforcement of this Agreement or any claims hereunder, and hereby waives any and all rights under the laws of any foreign jurisdiction to object to such jurisdiction. Any claim by Seller against Purchaser shall be brought in the State of New York only. In any suit or proceeding relating to this Agreement, the parties mutually waive trial by jury.

(j) SELLER IRREVOCABLY & UNCONDITIONALLY WARRANTS THAT IT WILL AT ALL TIMES MAINTAIN CURRENT ON ANY AND ALL STATE OR LOCAL PAYROLL TAXES.

(k) Seller hereby grants Quantum authority to sign Ab's name on any forms required by any governmental entity (including but not limited to Bloomberg Tax's or similarly required government form) for the purpose of facilitating the notification of an assignment and transfer of payment to Purchaser and/or to recover from a breach of the security agreement provided for in (l) above.

Seller (assignee) Covenants that he will receive any money advanced hereunder as trustee funds to be first applied to the following expenditures arising out of the improvement of real property and incurred in the performance of said contract;

a) Payment of claims of subcontractors, architects, engineers, surveyors, laborers and materialmen;

b) Payment of the amount of taxes levied on payroll including such persons and withheld or required to be withheld or expended to be withheld and taxes based on the purchase price or value of materials or equipment required to be installed or furnished in connection with the performance of the improvement;

c) Payment of taxes and unemployment insurance and other contributions due by reason of the employment out of which such claims arose;

d) Payment of any benefits or wage supplements, or the amount necessary to provide such benefits or furnished such supplements, to the extent that the trustee, as employee, is obligated to pay or provide such benefits or furnish such supplements by any agreement to which he is a party;

e) Payment of premiums on a surety bond or bonds filed and premiums on insurance accrued during the making of the improvement.

Nothing in this provision shall be considered as imposing upon the Purchaser (assignee) any obligation to sue to the proper application of money advanced under such assignment by the assignee.

SELLER AGREES TO HOLD PURCHASER HARMLESS FROM ANY BREACH OF SELLER'S REPRESENTATIONS, WARRANTIES, AND COVENANTS CONTAINED HEREIN WITHOUT ANY EFFECT WHATSOEVER FOR SETOFFS, REDUCTIONS OR COUNTERCLAIMS.

ACCEPTED AND AGREED

By: L. Lammerts Jr. Exec. By: [Signature] President  
QUANTUM CORPORATION, SUMMERS, LTD. SIGNATURE AND TITLE

Guarantee: The undersigned (not including the Seller) hereby personally guarantees (s) and shall be jointly and severally liable for the warranties, representations and covenants made by Seller set forth above.

By: \_\_\_\_\_

SIGNATURE ONLY  TITLE NEEDED

Affixation and Certification:  
State of \_\_\_\_\_ County of \_\_\_\_\_  
Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

180 day of 20\_\_\_\_

SIGNATURE OF Notary Public

We are Purchasing certain of the group of accounts assigned hereto for the price specified of the reverse side hereto. We arrived at the price by analyzing the credit risk while we are assuming as well as the time that might elapse before we collect the proceeds of those accounts that do ultimately pay us. As an enhancement to our ability to sell us the "highest quality" accounts, (i.e., those that are paid quickly) we are pleased to offer rebates on our discount that we apply in arriving at the purchase price, provided that we shall have first recovered our purchase price in full within 180 days of the date of the purchase. The following schedule shows that amount of rebate that you may be entitled to in those cases where the accounts should be paid to us more quickly than we had anticipated when we calculated the discount. There shall be no rebate of invoices collected beyond 180 days. Notwithstanding anything contained herein under no circumstance shall the discount exceed \$250.00.

T.H. 25914

|  |  |
|--|--|
| Accounts of the bulk paid within 1 to 45 days ...      | 1. per hundred of the account amount.  |
| Accounts of the bulk paid within 46 to 90 days ...     | 2. per hundred of the account amount.  |
| Accounts of the bulk paid within 91 to 135 days ...    | 3. per hundred of the account amount.  |
| Accounts of the bulk paid within 136 to 180 days ...   | 4. per hundred of the account amount.  |
| Accounts of the bulk paid within 181 to 225 days ...   | 5. per hundred of the account amount.  |
| Accounts of the bulk paid within 226 to 270 days ...   | 6. per hundred of the account amount.  |
| Accounts of the bulk paid within 271 to 315 days ...   | 7. per hundred of the account amount.  |
| Accounts of the bulk paid within 316 to 360 days ...   | 8. per hundred of the account amount.  |
| Accounts of the bulk paid within 361 to 405 days ...   | 9. per hundred of the account amount.  |
| Accounts of the bulk paid within 406 to 450 days ...   | 10. per hundred of the account amount. |
| Accounts of the bulk paid within 451 to 495 days ...   | 11. per hundred of the account amount. |
| Accounts of the bulk paid within 496 to 540 days ...   | 12. per hundred of the account amount. |
| Accounts of the bulk paid within 541 to 585 days ...   | 13. per hundred of the account amount. |
| Accounts of the bulk paid within 586 to 630 days ...   | 14. per hundred of the account amount. |
| Accounts of the bulk paid within 631 to 675 days ...   | 15. per hundred of the account amount. |
| Accounts of the bulk paid within 676 to 720 days ...   | 16. per hundred of the account amount. |
| Accounts of the bulk paid within 721 to 765 days ...   | 17. per hundred of the account amount. |
| Accounts of the bulk paid within 766 to 810 days ...   | 18. per hundred of the account amount. |
| Accounts of the bulk paid within 811 to 855 days ...   | 19. per hundred of the account amount. |
| Accounts of the bulk paid within 856 to 900 days ...   | 20. per hundred of the account amount. |
| Accounts of the bulk paid within 901 to 945 days ...   | 21. per hundred of the account amount. |
| Accounts of the bulk paid within 946 to 990 days ...   | 22. per hundred of the account amount. |
| Accounts of the bulk paid within 991 to 1035 days ...  | 23. per hundred of the account amount. |
| Accounts of the bulk paid within 1036 to 1080 days ... | 24. per hundred of the account amount. |
| Accounts of the bulk paid within 1081 to 1125 days ... | 25. per hundred of the account amount. |
| Accounts of the bulk paid within 1126 to 1170 days ... | 26. per hundred of the account amount. |

|                                   |            |                        |            |
|-----------------------------------|------------|------------------------|------------|
| 12/18/2007 17:33                  | 4108132828 | WESTWOOD CUSTOM HOME   | PAGE 03    |
| 12/18/2007 16:27                  | 4108591196 |                        | PAGE 02/02 |
| 12/18/2007 17:21                  | 4108132828 | WESTWOOD CUSTOM HOME   | PAGE 01    |
| 12/18/2007 17:11 FAX 212 768 1221 |            | <u>QUANTUM FUNDING</u> | 0002       |

12/18/07

**EXHIBIT A TO PURCHASE & SALE AGREEMENT  
BETWEEN  
QUANTUM CORPORATE FUNDING, LTD (PURCHASER)  
&  
Westwood Design Build Incorporated (Seller)**

Transaction# 25914 Cltxan#:

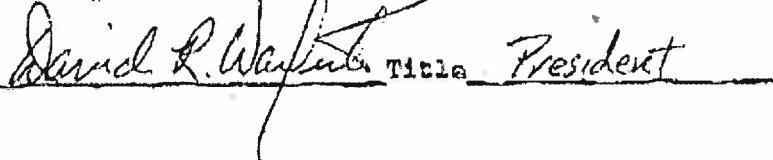
| Date           | Invoiced                          | Item Desc.Billto | Qta Shipped | Customer Name | U.P. | Ship To | Contract  | Invoice Amount       |
|----------------|-----------------------------------|------------------|-------------|---------------|------|---------|---|----------------------|
| 12/10/07 10084 | 46 National City Mortgage Company | SMI 32722.       |             |               |      |         | Project: Policydate residence Construction Draw, Policydate module delivery-\$80000 S1000. Customer delivery completed amount due and owing | \$18000-\$347,000.00 |

Page# 1 Transaction# 25914

TOTAL INVOICE: \$347,000.00

Seller hereby verifies the accuracy of the above:

By \_\_\_\_\_



David R. Wayne Title President

F

12/21/2007 13:17 4108132828  
12/20/2007 16:53 4108591196  
12/20/2007 17:53 4108132828

WESTWOOD CUSTOM HOME

PAGE 05

WESTWOOD CUSTOM HOME

PAGE 01/01  
PAGE 01



Quantum Corporate Funding, Ltd.  
1140 Avenue of the Americas, 16<sup>th</sup> Floor  
New York, NY 10036  
Ms. Shelley Simmonds

December 20, 2007

Re: Payment Authorization

Dear Ms. Simmonds,

Pursuant to your request, this letter serves as authorization to forward \$112,168.28 (One Hundred Twelve Thousand - One Hundred Sixty Eight and twenty - eight cents) on behalf of Westwood Design/Build Inc., to Peru Lyon Homes Corporation.

Please subtract the above listed amount from advance T #25914.

Thank you for your immediate attention in this matter.

Professionally,

A handwritten signature in black ink that reads "David R. Warfield". The signature is fluid and cursive, with "David" on top and "R. Warfield" below it.

David R. Warfield  
President, Westwood Design/Build Inc.

Cc: M Conrad

12/20/2007 15:46 4108132828

WESTWOOD CUSTOM HOME

PAGE 82

*Inspector Baldwin*

## **WIRING INSTRUCTIONS**

**Bank Name: Omega Bank, N.A.  
Wire Name: Omega State College  
ABA#: 031316271**

**For further credit of Penn Lyon Homes, Inc. A/C  
#40224230**

**P.O 107 195 AIRPORT RD  
SELINSGROVE, PA 17870  
Bank Address**

**Omega Bank  
366 Walker Drive  
State College, PA 16801**

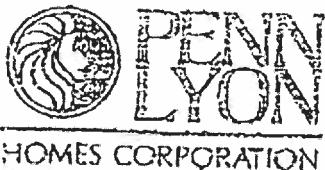
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G

12/20/2007 15:46 4108132828

WESTWOOD CUSTOM HOME

PAGE 03



P.O. BOX 27, AIRPORT ROAD  
SELINSGROVE, PA 17370  
(570) 374-0004  
FAX: (570) 374-8053  
Web: [www.pennlyon.com](http://www.pennlyon.com)

**SOLD TO:** 3445  
Westwood Design/Build Inc.  
13400 Baltimore Blvd. 2nd Floor  
Laurel MD 20707

**SHIPPED TO:**

INVOICE NO. 44-3850

DATE PRINTED  
Dec 20, 2007

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Current Account: QUANTUM CO S MOSS



Transactions from 12/21/2007 to 12/21/2007

View Transactions Since: Last statement    Total Transactions This Page: 36

**NOTE:** Click on a column name to sort transactions by that column in ascending ( $\Delta$ ) or descending ( $\nabla$ ) order.

| Date $\nabla$ | Check# | Description | Debits | Credits | Balance |
|---------------|--------|-------------|--------|---------|---------|
|---------------|--------|-------------|--------|---------|---------|

|            |  |   |              |  |              |
|------------|--|---|--------------|--|--------------|
| 12/21/2007 |  | OT: OMEGA STATE COLLEGE<br>FURTHER CREDIT: PENN LYON HOME | (112,168.28) |  | 2,305,012.77 |
| 12/21/2007 |  | OT: WESTWOOD DESIGN BUILD<br>INCO                         | (130,731.72) |  | 2,417,181.05 |



**From:** Craig Sheinker  
**Sent:** Tuesday, January 15, 2008 1:35 PM  
**To:** 'dreed@pennlyon.com'  
**Cc:** Shelley Simmonds; Maria DeSouza  
**Subject:**

Dear Mr. Reed:

Pursuant to our conversation on Friday, I am attaching hereto a scanned copy of an invoice purported to be invoice #850 from Penn Lyon to Westwood. As you will recall, you have advised me that such invoice is bogus, and that your records indicate your actual invoice #850 is for a completely different project than the one we intended to pay you for (i.e. Pollydore residence)

As you also know, we wired your company \$112,168.28 on December 21, 2007 for erection services at the Pollydore Residence. Therefore, Inasmuch as it now appears that we have been defrauded, we must demand that you immediately return the payment we made to your firm due to a total lack of consideration for such payment.

I invite you or your legal conseal to call me to further discuss any questions you may have.

Craig Sheinker  
President  
Quantum Corporate Funding, Ltd.  
1140 Avenue of the Americas  
16th Floor  
New York, NY 10036  
800-352-2535 X..20  
Fax: 212-944-8216  
[craigs@quantumfunding.com](mailto:craigs@quantumfunding.com)

J

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
QUANTUM CORPORATE FUNDING, LTD.,

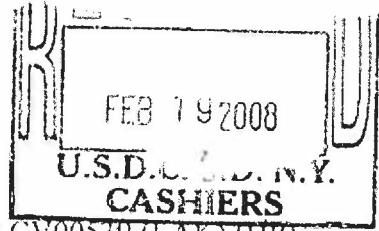
Plaintiff,

-against-

WESTWOOD DESIGN/BUILD  
INCORPORATED, DAVID R. WARFIELD,  
NATIONAL CITY MORTGAGE INC., and  
PENN LYON HOMES CORPORATION,

Defendants.

-----X  
Civil Action  
Docket No. 08 CV00539 (LAK) (HP)



**CORRECTED AMENDED  
COMPLAINT**

Plaintiff, Quantum Corporate Funding, Ltd., by its attorneys, Goetz Fitzpatrick, LLP, as and for its Complaint against the defendants alleges, upon information and belief, as follows:

**THE PARTIES**

1. Plaintiff Quantum Corporate Funding, Ltd. ("Quantum") is a corporation organized and existing under the laws of the State of New York, maintaining its principal place of business located at 1140 Avenue of the Americas, New York, New York 10036 and is engaged in the business of commercial finance.

2. Defendant Westwood Design/Build Incorporated ("Westwood") is a corporation organized and existing under the laws of the State of Maryland maintaining its principal place of business located at 12109 Gordon Avenue, Beltsville, Maryland 20705.

3. Defendant David R. Warfield ("Warfield") is a natural person, a citizen of the State of Maryland whose address is 715 East Maple Road, Linthicum Heights, Maryland 21090.

4. Defendant National City Mortgage Inc. ("National") is a corporation organized and existing under the laws of the State of Ohio, maintaining its principal place of business located at 3232 Newmark Drive, Miamisburg, Ohio 45342.

5. Penn Lyon Homes Corporation ("Penn") is a corporation organized and existing under the laws of the State of Pennsylvania maintaining its principal place of business at 195 Airport Road, Selinsgrove, Pennsylvania 17870.

**JURISDICTION AND VENUE**

6. There is original jurisdiction in this Court pursuant to 28 U.S.C. §1332 since there is diversity of citizenship between plaintiff Quantum and each of the defendants and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interest and costs.

7. Venue lies in this Court pursuant to 28 U.S.C. §1331(a) since a substantial part of the events or omissions giving rise to the claim herein occurred in this district.

**FIRST CAUSE OF ACTION AGAINST  
NATIONAL FOR BREACH OF CONTRACT**

8. On or about January, 2007 Mr. and Mrs. Eustace Pollydore, as owners, entered into a contract with defendant Westwood, as contractor, with defendant National, as construction lender, pursuant to which Westwood contracted to construct a new home at 6117 Elm Street, Lanham, Maryland for the Pollydores ("the Project").

9. By virtue of the work and materials furnished by defendant Westwood to the Pollydores for the Project there became due to Westwood from defendant National the sum of \$347,000.00 for which an invoice was rendered by Westwood to National (the "Invoice").

10. Defendant Westwood made an assignment to plaintiff Quantum of the moneys due to Westwood from defendant National on account of the Invoice (the "Assignment").

11. Simultaneously with the Assignment or within a short time thereof, plaintiff Quantum and defendant Westwood each gave notice of the Assignment to defendant National, and National acknowledged receipt of the Assignment.

12. By virtue of the Assignment, there was assigned by defendant Westwood to plaintiff Quantum, the sum of \$347,000.00.

13. By virtue of the foregoing, there became due and owing to plaintiff Quantum from defendant National, the sum of \$347,000.00.

14. Defendant National has refused to pay the Invoice, leaving due and owing to plaintiff Quantum the amount of \$347,000.00 for which demand has been duly made.

**SECOND CAUSE OF ACTION AGAINST  
NATIONAL FOR BREACH OF CONTRACT**

15. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "14" of this Complaint with the same force and effect as if fully set forth at length hereat.

16. Defendant National issued an estoppel certificate to plaintiff Quantum that the Invoice was correct and owing and that the work and materials invoiced had been completed and accepted (the "Estoppel Certificate").

17. Plaintiff Quantum relied upon the Estoppel Certificate in purchasing the Invoice from Westwood.

18. The \$347,000.00 Invoice amount was acknowledged by defendant National to plaintiff Quantum as being due and owing.

19. By virtue of the foregoing, there was due and owing to plaintiff Quantum from defendant National \$347,000.00.

20. Defendant National has refused to pay Quantum the \$347,000.00 amount due pursuant to the terms of the Estoppel Certificate leaving due and owing to Quantum the amount of \$347,000.00 for which demand has been made.

**FIRST CAUSE OF ACTION AGAINST  
WESTWOOD FOR BREACH OF CONTRACT**

21. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "20" of this Complaint with the same force and effect as if fully set forth at length hereat.

22. On December 20, 2007, in conjunction with the Assignment made by defendant Westwood to plaintiff Quantum, a Purchase and Sale Agreement (the "Agreement") was made, executed and delivered between Westwood and Quantum.

23. The Agreement set forth certain warranties, representations and covenants by defendant Westwood to plaintiff Quantum regarding the Assignment.

24. Defendant Westwood has breached the warranties, representations and covenants made by it in the Agreement, including those stating that the Invoice was presently due and owing and that were no set-offs or defenses against the assigned Invoice.

25. Defendant National asserts that the Invoice was not due and owing and that it has set-offs or defenses against the assigned Invoice.

26. As a result of defendant Westwood's breach of the Agreement, plaintiff Quantum has been damaged in the sum of not less than \$347,000.00.

27. Plaintiff Quantum has incurred and will incur attorneys fees in the prosecution of its claims, the extent of which is not yet known, for which defendant Westwood agreed, pursuant to the Agreement, to pay.

28. Due to defendant Westwood's breach of the Agreement, plaintiff Quantum has incurred damages, including attorney's fees, the final amount to be determined at trial.

**FIRST CAUSE OF ACTION AGAINST  
WARFIELD FOR BREACH OF CONTRACT**

29. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "28" with the same force and effect as if fully set forth at length hereat.

30. In conjunction with the Assignment and the Agreement, defendant Warfield made, executed and delivered to plaintiff Quantum a guarantee (the "Guarantee") in writing whereby he personally guaranteed defendant Westwood's performance of the Agreement's warranties, representations and covenants.

31. Defendant Warfield has failed to perform defendant Westwood's Agreement's warranties, representations and covenants.

32. Defendant Warfield breached his Guarantee of defendant Westwood's Agreements warranties, representations and covenants.

33. As a result of defendant Warfield's breach of this Guarantee, plaintiff Quantum has been damaged in the sum of not less than \$347,000.00.

34. Plaintiff Quantum has incurred and will incur attorneys fee in the prosecution of its claims against defendants Westwood and Warfield, the extent which are not yet known, but for which Warfield agreed, pursuant to his Guarantee, to pay.

35. Due to defendant Warfield's breach of his Guarantee, plaintiff Quantum has incurred damages of not less than \$347,000.00 exclusive of attorneys' fees, the final amount to be determined at trial.

**SECOND CAUSE OF ACTION AGAINST  
WESTWOOD AND WARFIELD FOR FRAUD**

36. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "35" of this complaint with the same face and effect as it fully set forth herein at length hercat.

37. In or about December 2007, defendants Westwood and Warfield fabricated the Invoice to defendant National, falsely stating that defendant Westwood had performed the work required of it pursuant to its contract with the Pollydores.

38. In or about December 20, 2007, in order to induce plaintiff Quantum to accept from defendant Westwood an assignment of the Invoice and in payment to wire transfer \$130,731.72 to Westwood and \$112,168.28 to defendant Penn allegedly in payment for supplies and materials used in the construction of the Project, defendants Westwood and Warfield represented to Quantum that Penn had supplied materials for the Project and that the Invoice was presently due and owing and represented an account receivable not subject to any defenses.

39. The representations made by defendants Westwood and Warfield were false, and in truth, the Invoice was worthless and not, in fact a good account receivable and defendant Penn had not delivered supplies and materials for the Project.

40. When the representations were made by defendants Westwood and Warfield, each knew them to be false and made them with the intent to deceive and defraud plaintiff Quantum and to induce Quantum to accept and to pay for the assignment of the Invoice.

41. Plaintiff Quantum at the time the representations were made, did not know the truth regarding them but believed them to be true, relied upon them and was, thereby induced to accept an assignment of the Invoice and to pay to or on behalf of defendant Westwood \$242,900.00.

42. Plaintiff Quantum did not know the true facts regarding the Invoice until or about January 11, 2007.

43. The Invoice is worthless and was so at the time it was assigned to Quantum.

44. As a result of the false representations made by the defendants Westwood and Warfield, plaintiff Quantum has been damaged in the sum of \$242,900.00.

**THIRD CAUSE OF ACTION AGAINST  
WESTWOOD AND WARFIELD FOR CONVERSION**

45. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "44" of this Complaint with the same force and effect as if fully set forth at length hereat.

46. Defendants Westwood and Warfield converted \$242,900.00 belonging to plaintiff Quantum.

**FIRST CAUSE OF ACTION AGAINST PENN FOR CONVERSION**

47. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "46" of this Complaint with the same force and effect as if set forth at length hereat.

48. On December 21, 2007, defendants Westwood and Warfield unlawfully took \$112,168.28 of plaintiff Quantum's monies, converted it to their own use, and transferred it to defendant Penn allegedly in payment for supplies and materials used in the construction of the Project.

49. In truth and in fact defendant Penn had not supplied materials to the Project.

50. In January, 2008, plaintiff Quantum demanded that defendant Penn return the \$112,168.28 to Quantum, but Penn has refused and still refuses to return the \$112,168.28 to Quantum.

51. Defendant Penn has retained the \$112,168.28 and has converted it to its own use.

52. By reason of the foregoing, plaintiff Quantum has sustained damages in the amount of \$112,168.28, plus interest from the date of conversion.

**SECOND CAUSE OF ACTION AGAINST PENN FOR UNJUST ENRICHMENT**

53. Plaintiff Quantum repeats and realleges each and every allegation set forth in paragraphs "1" through "52" of this Complaint with the same force and effect as if set forth at length hereat.

54. Defendant Penn has been unjustly enriched as a result of the \$112,168.28 of plaintiff's Quantum's monies transferred to it.

55. By reason of the foregoing, plaintiff Quantum has sustained damages in the amount of \$112,168.28.

**WHEREFORE**, the plaintiff, Quantum Corporate Funding Ltd., demand judgment as follows:

1. On the First Cause of Action against defendant National City Mortgage Inc., in the sum of \$347,000.00.

2. On the Second Cause of Action against defendant National City Mortgage Inc., in the sum of \$347,000.00.

3. On the First Cause of Action against defendant Westwood Design/Build Incorporated not less than the sum of \$347,000.00.

4. On the First Cause of Action against defendant David R. Warfield not less than the sum of \$347,000.00.

5. On the Second Cause of Action against defendant Westwood Design/Build Incorporated and David R. Warfield, jointly and severally, in the sum of \$242,900.00 together with punitive and exemplary damages in the sum of \$500,000.00.

6. On the Third Cause of Action against defendants Westwood Design/Build Incorporated and David R. Warfield, jointly and severally, in the sum of \$242,900.00 together with punitive and exemplary damages in the sum of \$500,000.00.

7. On the First Cause of Action against defendant Penn Lyon Home Corporation in the sum of \$112,168.28.

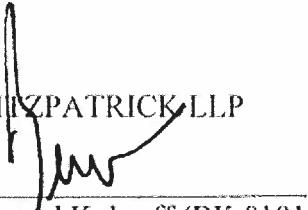
8. On the Second Cause of Action against defendant Penn Lyon Homes Corporation in the sum of \$112,168.28.

9. Pre-judgment and Post-judgment interest.

10. Costs, disbursements and reasonable attorney's fees in an amount to be determined at trial.

11. Such other and further relief as this Court deems just and proper.

Dated: New York, New York  
February 15, 2008

GOETZ FITZPATRICK LLP  
By:   
Bernard Kobroff (BK 0101)  
Attorneys for Plaintiff  
Quantum Corporate Funding, Ltd.  
One Penn Plaza, 44<sup>th</sup> Floor  
New York, New York 10119  
(212) 695-8100

K

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
QUANTUM CORPORATE FUNDING, LTD

Plaintiff,

-against-

WESTWOOD DESIGN/BUILD  
INCORPORATED, DAVID R. WARFIELD,  
NATIONAL CITY MORTGAGE, INC. and PENN  
LYON HOMES CORPORATION

Defendants.

Docket No. 08 CV 00539(LAK) (HP)  
**ANSWER TO COMPLAINT**

---

Defendant Penn Lyon Homes Corporation ("Penn Lyon"), by and through its attorneys, Bonner Kiernan Trebach & Crociata, LLP as and for its Verified Answer to Plaintiff's Corrected Amended Complaint, sets forth upon information and belief as follows:

#### **RESPONSE TO THE PARTIES**

1. Defendant Penn Lyon denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1-4 of the Corrected Amended Complaint.

2. Defendant Penn Lyon admits the allegations contained in paragraph 5 of the Corrected Amended Complaint.

#### **RESPONSE TO JURISDICTION/VENUE**

3. Defendant Penn Lyon denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 6-7 of the Corrected Amended Complaint.

**RESPONSE TO FIRST CAUSE OF ACTION AGAINST NATIONAL**

4. Defendant Penn Lyon denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 8-14 of the Corrected Amended Complaint.

**RESPONSE TO SECOND CAUSE OF ACTION AGAINST NATIONAL**

5. Defendant Penn Lyon repeats and realleges its responses to each and every allegation set forth in paragraphs 1 through 14 of this Complaint with the same force and effect as if fully set forth at length herein.

6. Defendant Penn Lyon denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 16-20 of the Corrected Amended Complaint.

**RESPONSE TO FIRST CAUSE OF ACTION AGAINST WESTWOOD**

7. Defendant Penn Lyon repeats and realleges its responses to each and every allegation set forth in paragraphs 1 through 20 of this Complaint with the same force and effect as if fully set forth at length herein.

8. Defendant Penn Lyon denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 22-28 of the Corrected Amended Complaint.

**RESPONSE TO FIRST CAUSE OF ACTION AGAINST WARFIELD**

9. Defendant Penn Lyon repeats and realleges its responses to each and every allegation set forth in paragraphs 1 through 28 of this Complaint with the same force and effect as if fully set forth at length herein.

10. Defendant Penn Lyon denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 30-35 of the Corrected Amended Complaint.

**RESPONSE TO SECOND CAUSE OF ACTION AGAINST WARFIELD**

11. Defendant Penn Lyon repeats and realleges its responses to each and every allegation set forth in paragraphs 1 through 35 of this Complaint with the same force and effect as if fully set forth at length herein.

12. Defendant Penn Lyon denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 37-44 of the Corrected Amended Complaint.

**RESPONSE TO THIRD CAUSE OF ACTION AGAINST WARFIELD**

13. Defendant Penn Lyon repeats and realleges its responses to each and every allegation set forth in paragraphs 1 through 44 of this Complaint with the same force and effect as if fully set forth at length herein.

14. Defendant Penn Lyon denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 46 of the Corrected Amended Complaint.

**RESPONSE TO FIRST CAUSE OF ACTION AGAINST PENN**

15. Defendant Penn Lyon repeats and realleges its responses to each and every allegation set forth in paragraphs 1 through 46 of this Complaint with the same force and effect as if fully set forth at length herein.

16. Defendant Penn Lyon denies the allegations contained in paragraphs 48-52 of the Corrected Amended Complaint.

**RESPONSE TO SECOND CAUSE OF ACTION AGAINST PENN**

17. Defendant Penn Lyon repeats and realleges its responses to each and every allegation set forth in paragraphs 1 through 52 of this Complaint with the same force and effect as if fully set forth at length herein.

18. Defendant Penn Lyon denies the allegations contained in paragraph 54 of the Corrected Amended Complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSES**

19. Recovery is barred in this action by the failure of the Complaint to state claim upon which relief can be granted against Defendant Penn Lyon.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSES**

20. Plaintiff has no privity of contract with Defendant Penn Lyon.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

21. Plaintiff has not sustained any damage by virtue of any act or omission of Defendant Penn Lyon or any of its agents or employees.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

22. Plaintiff has failed to mitigate damages reasonably as a matter of law.

**AS AND FOR AN FIFTH AFFIRMATIVE DEFENSE**

23. Any damage sustained by the Plaintiff which was not caused by the culpable conduct of Plaintiff was caused by the culpable conduct of persons and entities over which Defendant Penn Lyon had no control.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

24. Pursuant to the provisions of Article 16 of CPLR, should Defendant Penn Lyon be found liable to Plaintiff for damages, such liability being fifty percent or less of

the total liability assigned to all persons liable, the liability of Defendant Penn Lyon for non-economic loss shall not exceed its equitable share determined in accordance with the relative culpability of all persons liable.

AS AND FOR AN SEVENTH AFFIRMATIVE DEFENSE

25. In the event that the Plaintiff has settled or should in the future settle any portion of their claim arising from the allegations contained in the Plaintiff's Complaint with any currently named or to be named Defendants, the respective rights of the remaining parties should be determined pursuant to Section 15-108 of the General Obligations Law.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

26. Any funds obtained by Defendant Penn Lyon were received as part of a bona fide good faith transaction.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

27. Defendant Penn Lyon was authorized by co-defendant Westwood to assume ownership of the funds at issue in this litigation.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

28. Plaintiffs' claims are barred due to the insufficiency of service of process.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

29. Recovery is barred in this action as to this Defendant by reason of the applicable Statute of Limitations.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

30. Defendant Penn Lyon has not been unjustly enriched.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

31. Any recovery by Plaintiff is subject to the doctrine of set-off.

AS AND FOR AN FOURTEENTH AFFIRMATIVE DEFENSE

32. The plaintiff lacks standing to bring these claims.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

33. These defendants adopt and incorporate by reference as if the same were set forth at length herein, all other affirmative defenses which have been or will be asserted by any other parties in this action, except those which may contain allegations of liability against these defendants, to the extent that such defenses are applicable to these defendants.

AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE

34. This party reserves the right to supplement these affirmative defenses up to an including time of trial.

AS AND FOR A FIRST CROSS-CLAIM AGAINST CO-DEFENDANTS  
WESTWOOD, NATIONAL AND WARFIELD, DEFENDANT PENN ALLEGES  
AS FOLLOWS:

35. That if the Plaintiff sustained the injuries and damages in the manner and at the time and place alleged in the complaint, all of which are specifically denied, such damages were sustained by reason of the acts, conduct, negligence, misfeasance or nonfeasance of co-defendants Westwood, National and Warfield, their agents, servants and/or employees, and not by defendant Penn Lyon, and if it is found that defendant Penn Lyon is liable to Plaintiff herein, all of which is specifically denied, then defendant Penn Lyon, on the basis of apportionment of responsibility, is entitled to contribution from co-defendants Westwood, National and Warfield to pay for all or part of any verdict or judgment that Plaintiff may recover against Defendant Penn Lyon proportionate to the co-

defendants' actual liability, together with attorneys' fees and the costs and disbursements of this action.

**AS AND FOR A SECOND CROSS-CLAIM AGAINST CO-DEFENDANTS  
WESTWOOD, NATIONAL AND WARFIELD, DEFENDANT PENN LYON  
ALLEGES AS FOLLOWS:**

36. That if the Plaintiff sustained the injuries and damages in the manner and at the time and place alleged in the Complaint, and if it is found that Defendant Penn Lyon is liable to Plaintiff herein, all of which is specifically denied, then Defendant Penn Lyon, on the basis of common-law indemnification, is entitled to recovery from the co-defendants, Westwood, National and Warfield to pay for all or part of any verdict or judgment that Plaintiff may recover against Defendant Penn, together with attorneys fees and the costs and disbursements of this action.

**AS AND FOR A THIRD CROSS-CLAIM AGAINST CO-DEFENDANTS  
WESTWOOD AND WARFIELD, DEFENDANT PENN ALLEGES AS  
FOLLOWS:**

37. Assuming, arguendo, that plaintiff establishes that the funds it sent to Penn Lyon were intended as payment for the "Pollydore Project" Penn Lyon is not liable to plaintiff and should not be required to return the funds to plaintiff because it was fraudulently induced by Westwood and Warfield to accept the funds in payment for the "Harris Transaction."

38. Defendants Westwood and Warfield represented and warranted to Defendant Penn Lyon that it would be receiving a sum of \$112,168.12 in connection with a transaction between and among Penn Lyon and Westwood for the production and manufacture of modular custom-built home units to be delivered to 14101 Old Stage Road, Bowie, Maryland owned by Samuel J. Harris. (the "Harris Transaction").

39. Penn Lyon has never entered into any contracts or transactions with Westwood or Warfield for the production and manufacture of modular custom-built home units to be delivered to 6117 Elm Street, Lanham, Maryland on property owned by Mr. and Mrs. Eustace Pollydore (the "Pollydore Project").

40. Prior to December 24, 2007, Westwood informed Penn Lyon that it would soon be sending a wire transfer payment to Penn Lyon to be applied to the Harris Transaction.

41. On or about December 24, 2007, Penn Lyon received a wire transfer in the amount of \$112,168.12 as promised by Westwood.

42. On or about December 26, 2007, Westwood contacted Penn Lyon to confirm that its wire transfer in the amount of \$112,168.12 for the Harris Transaction was received and appropriately applied to reduce the balance due on that transaction

43. In accordance with Westwood and Warfield's representations and warranties, Penn Lyon applied the funds it received on December 26, 2007 to the Harris Transaction.

44. Westwood and Warfield's false representations were material to Penn Lyon's acceptance of the funds and application of the funds to the Harris Transaction for which Penn Lyon had already provided modular custom-built home units.

45. Westwood and Warfield's false representations to Penn were made with the knowledge that Penn Lyon would rely on it, which it did to Plaintiff Quantum and Penn Lyon's detriment, and as a result thereof, Quantum and Penn Lyon have been damaged.

WHEREFORE, Defendant PENN LYON demands judgment dismissing Plaintiff's Complaint and all Cross-Claims and/or other claims which may be deemed to exist against this Defendant and further demand judgment over and against Plaintiff for the amount of any judgment obtained against this Defendant by Plaintiff, or on the basis of apportionment of responsibility, and further demands that in the event that PENN LYON is found liable to Plaintiff herein, then PENN LYON, on the basis of apportionment of responsibility and indemnity as well as common law fraud/fraudulent inducement, has judgment over and against co-defendants WESTWOOD, WARFIELD AND NATIONAL for all or part of any verdict or judgment that Plaintiff may recover against said answering Defendant, in such amounts as a jury or the Court may direct, together with attorneys' fees and the costs and disbursements of this action. PENN LYON also seeks punitive damages against defendants WESTWOOD AND WARFIELD in connection with its cross-claim for fraudulent inducement.

Dated: New York, New York  
April 10, 2008

By:

Yours etc., 

Scott H. Goldstein, Esq.  
BONNER KIERNAN TREBACH  
& CROCIATA, LLP  
Attorneys for Defendant,  
Penn Lyon Homes Corporation  
State Building, Suite 3304  
New York, New York 10118  
(212) 268-7535

TO: Bernard Kobroff, Esq.  
Goetz Fitzpatrick, LLP  
Attorneys for Plaintiff  
One Penn Plaza  
Suite 4401  
New York, New York 10119

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
QUANTUM CORPORATE FUNDING, LTD., Civil Action  
Docket No. 08 CV00539(LAK)(HBP)

Plaintiff,

-against-

WESTWOOD DESIGN/BUILD  
INCORPORATED, DAVID B. WARFIELD,  
NATIONAL CITY MORTGAGE INC., and  
PENN LYON HOMES CORPORATION,

Defendants.

-----X  
NATIONAL CITY MORTGAGE,

Third-Party Plaintiff,

-against-

MICHAEL CONRAD, a/k/a MICHAEL CONRAD  
BROWN,

Third-Party Defendant.

-----X

**PLAINTIFF'S MEMORANDUM OF  
LAW IN SUPPORT OF SUMMARY  
JUDGMENT AGAINST DEFENDANT  
PENN LYON HOMES CORPORATION**

GOETZ FITZPATRICK LLP  
Attorneys for Plaintiff  
Quantum Corporate Funding, Ltd.  
One Penn Plaza, 44<sup>th</sup> Floor  
New York, New York 10119  
(212) 695-8100

Bernard Kobroff, Esq.  
Of Counsel

**PRELIMINARY STATEMENT**

This Memorandum of Law is submitted on behalf of plaintiff Quantum Corporate Funding, Ltd. ("Quantum") in support of its motion for summary judgment against defendant Penn Lyon Homes Corporation ("Penn") pursuant to Rule 56 of the Federal Rules of Civil Procedure. Upon the proofs submitted, there is no genuine triable issue of fact or any meritorious legal defense to preclude granting judgment to plaintiff Quantum against defendant Penn for conversion and unjust enrichment.

**STATEMENT OF FACT**

The facts underlying Quantum's claims against defendant Penn are set forth in the Affidavit of Craig Sheinker, sworn to July 3, 2008, and in the Statement Pursuant to Local Rule 56.1, and are incorporated herein.

**ARGUMENT**

The undisputed facts establish as a matter of law that defendant Penn has been unjustly enriched and/or has converted \$112,168.28 belonging to plaintiff Quantum.

**Standard of Review:**

To obtain summary judgment, the movant must demonstrate that, under the undisputed material facts, movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S. Ct. 2505, 91 L. Ed. 202 (1986); Matsushita Elec. Indus. Co., v. Zenith Radio Corp., 475 U.S. 574, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986). "The substantive law underlying a claim determines if a fact is material and only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Dervin Corp. v. Banco Bilbao

Vizcaya Argentina, 2004 WL 1933621 (S.D.N.Y. 2004) citing Anderson, 477 U.S. supra at 248.

**As Regards Unjust Enrichment:**

"In order to state a claim for unjust enrichment under New York law<sup>\*</sup> plaintiff must show that (1) defendant was enriched, (2) the enrichment was at plaintiff's expense and (3) the circumstances were such that equity and good conscience require defendant to make restitution.<sup>14</sup> Weisberg v. Smith, 401 F. Supp. 2d 359, 362 (S.D.N.Y. 2005) citing Harger v. Price, 204 F. Supp. 2d 669, 710 (S.D.N.Y. 2002) quoting Violette v. Armonk Associates, L. C., 872 F. Supp. 1279, 1282 (S.D.N.Y. 1995).

Herein the undisputed facts evidence that: (1) defendant Penn was enriched—since it received \$112,168.28 transferred into its account at Omega bank; (2) defendant Penn's enrichment was at plaintiff's Quantum's expense – since the wire transfer came from Quantum's account at Sterling National Bank; and (3) the circumstances are such that equity and good conscience require defendant Penn to make restitution – since Penn received the transfer from Quantum in payment for a modular residence that Penn had allegedly supplied to Mr. and Mrs. Pollydore when, in fact, Penn had not and never did supply any such residence.

The controlling legal principle was discussed in Manufactures Hanover v. Chemical Bank, 160 A.D.2d 113, 559 N.Y.S.2d 704, 707 (1<sup>st</sup> Dept 1990):

"The principal that a party who pays money, under a mistake of fact, to one who is not entitled to it should, in equity and good conscience, be permitted to recover it back is longstanding and well recognized (Ball v. Shepard, 202 N.Y. 247, 253, 95 N.E. 719) and applies even if the mistake is due to the negligence of the payor (see, e.g.,

Manufacturers Trust Co. v. Diamond, 17 Misc.2d 909, 186 N.Y.S.2d 917 [App.Term, 1<sup>st</sup> Dep't]; Mutual Life Insurance Co. of New York v. William B. Kessler, Inc., 25 Misc.2d 242, 242-243, 202 N.Y.S.2d 92). The rule has its

underpinnings in unjust enrichment (see, Miller v. Schloss, 218 N.Y. 400, 113 N.E. 337) and rests upon the equitable principle that a person shall not be allowed to enrich himself unjustly at the expense of another. \* \* \* ‘It is an obligation which the law creates, in the absence of any agreement, when and because the acts of the parties or others have placed in the possession of one person money \* \* \* under such circumstances that in equity and good conscience he ought not to retain it \* \* \*.’ (Id. at 407, 113 N.E. 337.) Noting its equitable origins, the court in Byxbie v. Wood, 24 N.Y. 607 stated, ‘Having money that rightfully belongs to another, creates a debt; and wherever a debt exists without an express promise to pay, the law implies a promise \* \* \*.’ (Id. at 610.)”

Accordingly, the law in New York is clear:

“a party who has made a mistaken payment to another based upon a unilateral mistake of fact may recover the payment unless the payee has changed his position to his detriment in reliance upon the mistaken payment.” Bank Saderat Iran v. Amin Beydoun, Inc., 555 F.Supp. 770, 774 (S.D.N.Y. 1983).

Herein, it is undisputed that defendant Penn did not change its position to its detriment in reliance upon Quantum’s mistaken payment, i.e. unlike in Bank Saderat, 555 F.Supp. supra at 774 or in Swiss Bank Corporation v. JLM International, 1995 WL 517183 (S.D.N.Y. 1995), no goods were shipped by the recipient of the mistaken payment in reliance thereon.

Rather, herein, as in Manufacturer Hanover (559 N.Y.S.2d supra at 712) the funds always remained in the recipient’s hands and have been used by the recipient to reduce its customer’s, the thief’s, obligation to it arising from other transactions. However, the thief is not entitled to receive such credit to its account. Cf. Schaffner v. Pierce, 75 Misc. 2d 21, 347 N.Y.S.2d 411, 414 (Dist. Ct. Nassau 1973) (“To take possession of personal property where the consent of the owner is induced by a fraudulent misrepresentation is a conversion”).

Therefore, since Penn did not change its position to its detriment in reliance on Quantum's \$112,168.28 mistaken payment to it, equity and good conscience requires that Penn make restitution.

Accordingly, the undisputed facts establish as a matter of law that defendant Penn has been unjustly enriched at plaintiff Quantum's expense in the amount of \$112,168.28.

**As Regards Conversion:**

In Republic of Haiti v. Duvalier, 211 A.D.2d 379, 626 N.Y.S.2d 472, 475 (1<sup>st</sup> Dept. 1995), the Court stated:

"The tort of conversion is established when one who owns and has a right to possession of personal property proves that the property is in the unauthorized possession of another who has acted to exclude the rights of the owner (Payne v. White, 101 A.D.2d 975, 976, 477 N.Y.S.2d 456; Peters Griffin Woodward, Inc. v. WCSC, Inc., 88 A.D.2d 883, 452, N.Y.S.2d 599). Where the property is money, it must be specifically identifiable and be subject to an obligation to be returned or to be otherwise treated in a particular manner (Manufacturers Hanover Trust Co. v. Chemical Bank, 160 A.D.2d 113, 124-25, 559 N.Y.S.2d 704)."

In addition; (a) the "negligence of an owner facilitating a common-law larceny of tangible personal property is no defense to an action for conversion of the stolen goods against the vendee of the thief, even though he has bought in good faith from the thief" (Harford Accident & Ind. Co. v. Walston Co., 21 N.Y.2d 219, 221, 287 N.Y.S.2d 58 (1967) reaffirmed on reargument, 22 N.Y.2d 672, 291N.Y.S.2d (1968)); and (b) "if possession of the property is originally lawful, a conversion occurs when the defendant refuses to return the property after a demand". White v. City of Mount Vernon, 221 A.D.2d 345, 633 N.Y.S.2d 369, 370 (2<sup>nd</sup> Dept. 1995).

In Manufacturers Hanover, 559 N.Y.S.2d supra at 712, the Court concluded that plaintiff's wire transfer of a specific sum satisfied the requirement that the money be

specifically identifiable. See also Payne v. White, 101 A.D.2d 975, 477 N.Y.S.2d 456, 458 (3d Dept. 1984) ("the funds in question were clearly identifiable as the proceeds of a specific named bank account"). Herein it is undisputed that the specific sum of \$112,168.28, the amount which Quantum claims in its conversion cause of action, was wired from Quantum's account at Sterling National Bank to defendant Penn's account No. 40224230 at Omega Bank.

In Manufacturers Hanover, 559 N.Y.S.2d supra at 712, the Court concluded that the wiring of the specific sum to be credited for a specific purpose, created an obligation on the part of the defendant recipient to either "treat the transfer in the specified manner or return the funds". Herein it is undisputed that the \$112,168.28 was wired by Quantum in payment for the Pollydore Residence and that Penn neither credited that payment to the Pollydore Residence nor returned the payment to Quantum. See Meese v. Miller, 79 A.D.2d 237, 436 N.Y.S.2d 496, 500 (4<sup>th</sup> Dept. 1981) ("Any use of such property beyond the authority which an owner confers upon a user or in violation of instructions given is a conversion").

It is also undisputed that on January 15, 2008 Quantum demanded that Penn return the \$112,168.28 it had received in payment of the Pollydore Residence and that Penn refused to return this property to the funds' owner, Quantum.

Accordingly, the undisputed facts establish as a matter of law that defendant Penn on January 15, 2008 converted \$112,168.28 of Quantum's property and, accordingly, that Quantum is entitled to the return of its property together with interest at the statutory rate from that date. Robert R. Gibbs, Inc. v. State, 70 A.D.2d 750, 417 N.Y.S.2d 24, 25 (3<sup>rd</sup> Dept. 1979) ("Measure of damages in conversion action is value of property at time of conversion plus interest").

**CONCLUSION**

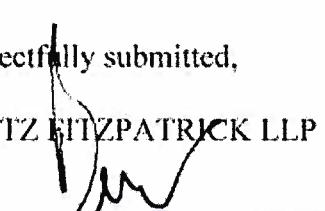
Based upon the foregoing the Court should grant summary judgment to plaintiff Quantum Corporate Funding, Ltd. against defendant Penn Lyon Homes Corporation and award Quantum the sum of \$112,168.28 together with interest thereon from January 15, 2008.

Dated: New York, New York  
July 3, 2008

Respectfully submitted,

GOETZ FITZPATRICK LLP

By:

  
Bernard Kobroff (BK 0101)  
Attorneys for Plaintiff  
Quantum Corporate Funding, Ltd.  
One Penn Plaza, 44<sup>th</sup> Floor  
New York, New York 10119  
(212) 695-8100

W:\bkobroff\Quantum\Westwood\Memo of Law.doc

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

vs.

WESTWOOD DESIGN/BUILD INCORPORATED,  
DAVID R. WARFIELD, NATIONAL CITY  
MORTGAGE INC., and PENN LYON HOMES  
CORPORATION.

Defendants.

-----X  
NATIONAL CITY MORTGAGE,

Third-Party Plaintiff,

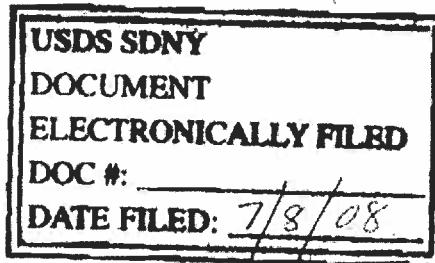
vs.

MICHAEL CONRAD, a/k/a MICHAEL CONRAD  
BROWN.

Third-Party Defendant.

-----X  
Civil Action No. 08-cv-0539  
(LAK) (HBP)

**DEFAULT JUDGMENT IN  
FAVOR OF DEFENDANT/  
CROSS-CLAIMANT/  
THIRD-PARTY PLAINTIFF  
NATIONAL CITY  
MORTGAGE AS AGAINST  
WESTWOOD DESIGN/BUILD  
INCORPORATED, DAVID R.  
WARFIELD, AND MICHAEL  
CONRAD, A/K/A MICHAEL  
CONRAD BROWN**



Defendant/Cross-Claimant/Third-Party Plaintiff National City Mortgage ("NCM")

having filed its Answer, Separate Defenses, Cross-Claim and Third-Party Complaint on February 29, 2008 ("Cross-Claim and Third-Party Complaint"); copies of the Cross-Claim and Third Party Complaint having been served on cross-claim defendants Westwood Design/Build Incorporated ("Westwood") and David R. Warfield ("Warfield") via Federal Express on February 29, 2008, and proof of such service having been filed with the Court on February 29, 2008; copies of the Cross-Claim and Third-Party Complaint and Third-Party Summons having been personally served on third-party defendant Michael Conrad, a/k/a Michael Conrad Brown ("Conrad") on April 26, 2008, and proof of such service having been filed with the Court on May 6, 2008; and

Case 1:08-cv-00539-LAK Document 42 Filed 07/08/2008 Page 2 of 2

the cross-claim defendants Westwood and Warfield and third-party defendant Conrad not having answered the Cross-Claim and Third-Party Complaint; and the time for cross-claim defendants Westwood and Warfield and third-party defendant Conrad to respond to the Cross-Claim and Third-Party Complaint having expired; and the Court having considered the Affidavit of Christopher Washburn and determined that NCM has established that cross-claim defendants Westwood and Warfield and third-party defendant Conrad are liable to NCM for fraudulent misrepresentations and fraudulent inducement; it is

ORDERED, ADJUDGED AND DECREED: That cross-claimant and third-party plaintiff NCM have judgment by default against cross-claim defendants Westwood and Warfield and third-party defendant Conrad, jointly and severally, in the amount equal to any loss, liability or expense that may be imposed upon, or incurred by, NCM on account of plaintiff Quantum Corporate Funding, Ltd.'s claims against NCM.

Dated: New York, New York

July 7, 2008



Hon. Lewis A. Kaplan, U.S.D.J.

This document was entered on the docket on \_\_\_\_\_.

Case 1:08-cv-00539-LAK Document 48 Filed 07/30/2008 Page 1 of 1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

-against-

08 Civ. 0539 (LAK)

WESTWOOD DESIGN/BUILD, INC., et al.,

Defendants.

----- X  
**ORDER**

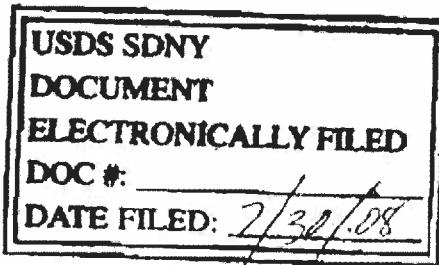
LEWIS A. KAPLAN, *District Judge*.

Plaintiff's application for a default judgment against defendants Westwood Design/Build, Inc., and David R. Warfield [DI 44-46] is granted. As this resolves all of the claims against these defendants and delay in the finality and enforceability of the judgment would work a hardship, the Court finds no just reason for delay and directs the Clerk to enter final judgment in favor of plaintiff and against these defendants, jointly and severally, in the amount of \$347,000.

SO ORDERED.

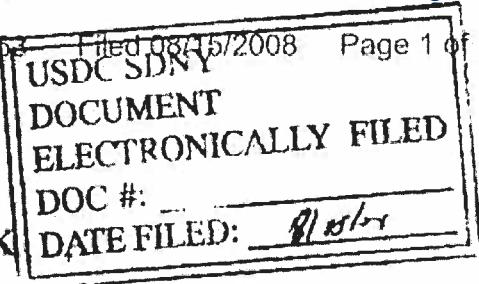
Dated: July 30, 2008

  
Lewis A. Kaplan  
United States District Judge



Case 1:08-cv-00539-LAK-HBP Document 65-8 Filed 08/15/2008 Page 1 of 1

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**



QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

08 CIVIL 0539 (LAK)

-against-

**DEFAULT JUDGMENT**

WESTWOOD DESIGN/BUILD, INC., et al.,  
Defendants.

# 08,1459

X

Plaintiff having moved for a default judgment against defendants Westwood Design/Build, Inc. and David R. Warfield, and the matter having come before the Honorable Lewis A. Kaplan, United States District Judge, and the Court, on July 30, 2008, having rendered its Order that there is no just reason for delay, directing the Clerk of the Court to enter final judgment in favor of plaintiff and against defendants, jointly and severally, in the amount of \$347,000, it is,

**ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Order dated July 30, 2008, there is no just reason for delay, final judgment is entered in favor of plaintiff and against defendants, jointly and severally, in the amount of \$347,000.

**Dated:** New York, New York  
August 15, 2008

**J. MICHAEL McMAHON**

BY:

Clerk of Court

  
Deputy Clerk

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

-against-

08 Civ. 0539 (LAK)

WESTWOOD DESIGN/BUILD, INC., et al.,

Defendants.

-----x  
**ORDER**

LEWIS A. KAPLAN, *District Judge*.

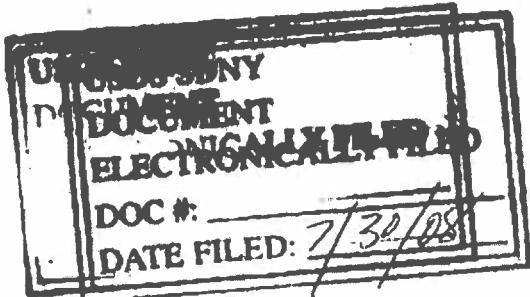
Plaintiff moves for summary judgment awarding it the sum of \$112,168.28 together with interest thereon from January 25, 2008 as against defendant Penn Lyon Homes Corporation ("Penn"). Penn has not responded to the motion although the time within which to do so has expired.

In these circumstances, the well supported averments of plaintiff's Rule 56.1 Statement are deemed admitted. S.D.N.Y. CIV. R. 56.1(c). It therefore is plain that there is no disputed issue as to any material fact and that plaintiff is entitled to judgment as a matter of law. Accordingly, plaintiff's motion [DI 37] is granted in all respects.

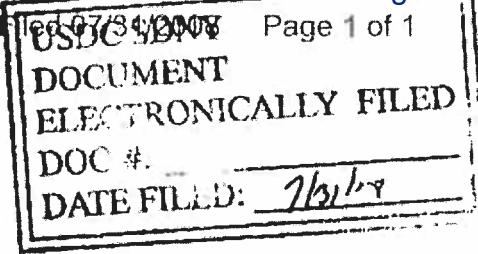
As this resolves all of plaintiff's claims against Penn and any delay in the finality and enforceability of its judgment against Penn would work an undue hardship, the Court hereby determines that there is no just reason for delay and directs the Clerk to enter final judgment in favor of plaintiff and against Penn in accordance with this order.

SO ORDERED.

Dated: July 30, 2008



  
Lewis A. Kaplan  
United States District Judge



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
QUANTUM CORPORATE FUNDING, LTD.,

Plaintiff,

08 CIVIL 0539 (LAK)

-against-

FINAL JUDGMENT

WESTWOOD DESIGN/BUILD, INC., et alio.,  
Defendants.

# c8,1376

-----X

Plaintiff having moved for summary judgment awarding it the sum of \$112,168.28 together with interest thereon from January 25, 2008 as against defendant Penn Lyon Homes Corporation ("Penn"), and the matter having come before the Honorable Lewis A. Kaplan, United States District Judge, and the Court, on July 30, 2008, having rendered its Order that there is no just reason for delay, directing the Clerk of the Court to enter final judgment in favor of plaintiff and against Penn in the sum of \$112,168.28 together with interest thereon from January 25, 2008, it is,

**ORDERED, ADJUDGED AND DECREED:** That for the reasons stated in the Court's Order dated July 30, 2008, there is no just reason for delay, final judgment is entered in favor of plaintiff and against Penn in the sum of \$112,168.28 together with interest thereon from January 25, 2008.

Dated: New York, New York  
July 31, 2008

J. MICHAEL McMAHON

Clerk of Court

BY:

Deputy Clerk

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON \_\_\_\_\_



GOETZ FITZPATRICK LLP  
One Penn Plaza, New York, NY 10119 | (T) 212-695-8100 | (F) 212-629-4013

Bernard Koboroff  
[bkoboroff@goetzfitz.com](mailto:bkoboroff@goetzfitz.com)

August 1, 2008

**BY HAND**

Honorable Lewis A. Kaplan  
United States District Judge  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: Quantum Corporate Funding, Ltd., v. Westwood Design/Build Inc., et al.  
S.D.N.Y. No. 08 CV 00539 (LAK)(HBP)

Dear Judge Kaplan:

We represent the plaintiff Quantum Corporate Funding, Ltd ("Quantum") in the referenced matter. I am writing in response to the July 31<sup>st</sup> letter of Scott M. Goldstein, the attorney for defendant Penn Lyon Homes Corporation ("Penn Lyon"), to set forth the facts from Quantum's side.

From the Court's May 9, 2008 conference onward I attempted to engage Mr. Goldstein in settlement negotiations. However, despite my telephone calls and e-mails and Mr. Goldstein's promises of response, no response to Quantum's proposals was received.

Concluding that Quantum could not continue to wait for Penn Lyon's promised response, on July 3, 2008 (not July 8<sup>th</sup>), Quantum served its motion for summary judgment against Penn Lyon (as I said at the May 9<sup>th</sup> conference it would) and delivered two courtesy copies to Your Honor.

On July 14<sup>th</sup> at 8:06 P.M., I received an e-mail from Mr. Goldstein informing me that he wanted to work out a briefing schedule to oppose Quantum's motion. On the morning of July 15<sup>th</sup> I telephoned Mr. Goldstein, who was not in, and left a message for him to immediately return my call since I would not be in the office for the rest of the week and had to be in court that afternoon. Soon thereafter I received a call from Mr. Goldstein. Mr. Goldstein requested my consent to an adjournment of the summary judgment motion to enable Penn Lyon to depose Mr. Sheinker so that he could "test his veracity." From our conversation it became apparent that Penn Lyon had no defense to the motion and was simply seeking to delay its determination. Therefore, on July 15<sup>th</sup>, I informed Mr. Goldstein that: (a) Quantum would not consent to an adjournment; (b) Quantum would respond to whatever discovery demands Penn Lyon chose to serve; (c) I was having cataract surgery performed the next day and would be out of the office until



GOETZ FITZPATRICK LLP

Monday, July 21, 2008; and (d) I calculated that Penn Lyon's ten business day period to respond to Quantum's motion would expire on July 21, 2008. It is disturbing that this conversation is nowhere referred to in Mr. Goldstein's letter.

By letter dated July 16, 2008, Mr. Goldstein served Penn Lyon's document demands and interrogatories.

Then, notwithstanding my advice that Quantum would not consent and that I had calculated Penn Lyon's time to oppose Quantum's motion as expiring on July 21<sup>st</sup>, at 5:38 P.M. on July 21<sup>st</sup> Mr. Goldstein sent me an e-mail requesting Quantum's consent to an extension of time for Penn Lyon to oppose Quantum's motion.

Thereafter, communications were had by counsel regarding extending the Scheduling Order's August 9<sup>th</sup> discovery cut-off date, the scheduling of the noticed depositions, and the setting of dates for document production and interrogatory responses. Pursuant thereto, on July 24<sup>th</sup> a proposed amended scheduling order was circulated amongst counsel. However, this proposed scheduling order was not executed because Mr. Goldstein insisted that it include a provision extending Penn Lyon's time to oppose Quantum's motion.

On July 30, 2008, I again spoke with Mr. Goldstein. I advised him that Penn Lyon's time to oppose Quantum's motion had expired and that Quantum continued to oppose any delay of its motion's determination and that, in any event, Mr. Sheinker's communications with Penn Lyon's President, David Reed, were set forth in an e-mail and a letter and that Mr. Sheinker's deposition would not disclose anything other than what those documents stated.

However, believing that the proposed amended scheduling order would not be stipulated to unless Penn Lyon was granted its extension, I requested that Mr. Goldstein draft a separate stipulation extending Penn Lyon's time to respond to Quantum's motion; which he did. Mr. Goldstein then signed the proposed amended scheduling order stipulation and I signed his stipulation extending Penn Lyon's time to respond to Quantum's motion. Also on July 30<sup>th</sup>, the Court granted Quantum's motion for summary judgment against Penn Lyon on default.

On July 31, 2008, I informed Quantum of the judgment's entry and of my having consented to extend Penn Lyon's time. Quantum advised me of its disapproval of my having consented to the extension, instructed me to oppose any motion to vacate the judgment (since Penn Lyon has no meritorious defense to Quantum's claims), and to again try to settle. I then spoke with Mr. Goldstein and informed him of Quantum's instructions. The result of that conversation is Mr. Goldstein's letter to Your Honor.



GOETZ FITZPATRICK LLP

Thank you for your consideration of this matter.

Very truly yours,

GOETZ FITZPATRICK LLP

By: \_\_\_\_\_

Bernard Koboroff

BK/jb

cc: Scott H. Goldstein, Esq.  
Thomas F. Doherty, Esq.  
(by regular mail and e-mail)

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Case 1:08-cv-00539-LAK-HBP Document 60 Filed 08/08/2008 Page 1 of 2

# MEMO ENDORSED

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
QUANTUM CORPORATE FUNDING, LTD.

Plaintiff,

-against-

WESTWOOD DESIGN/BUILD  
INCORPORATED, DAVID R. WARFIELD,  
NATIONAL CITY MORTGAGE, INC. and PENN  
LYON HOMES CORPORATION

Defendants.

|                      |
|----------------------|
| USDS SDNY            |
| DOCUMENT             |
| ELECTRONICALLY FILED |
| DOC #:               |
| DATE FILED: 8/8/08   |

Docket No. 08 CV 00539(LAK)(HP)

**ORDER TO SHOW CAUSE FOR A  
STAY OF ENFORCEMENT OF  
PLAINTIFF'S JUDGMENT  
AGAINST DEFENDANT PENN  
LYON HOMES AND DISCOVERY  
PENDING DISPOSITION OF PENN  
LYON HOMES'S MOTIONS  
PURSUANT TO RULES 59 AND 60.**

Upon the affirmation of Scott H. Goldstein, Esq. with exhibits and the accompanying memorandum of law, and upon all prior pleadings in this case, it is

ORDERED that plaintiff Quantum Corporate Funding, Ltd. ("Quantum") show cause before a motion term of this Court at Room 12B, United States Courthouse, 500 Pearl Street, in the City, County and State of New York, on Sept. 3, 2008 at 4:15 p.m., o'clock in the noon thereof, or as soon thereafter as counsel may be heard, why an order should not be issued pursuant to Rules 26, 62(b) and 65 of the Federal Rules of Civil Procedure permanently staying enforcement of Quantum's Judgment against defendant Penn Lyon Homes Corporation ("PLH") and staying all discovery proceedings pending the disposition of PLH's motions to vacate Quantum's judgment against it and for reconsideration of this Court's Order granting summary judgment against PLH in favor of Quantum; and it is further

ORDERED that, sufficient reason having been shown therefore, pending the hearing of defendant PLH's application for a permanent stay of enforcement of the judgment and discovery pending disposition of PLH's motions, pursuant to Rules 26,

Case 1:08-cv-00539-LAK-HBP Document 60 Filed 08/08/2008 Page 2 of 2

62(b) and 65, plaintiff is temporarily restrained and enjoined from enforcing its judgment.

against PLLI and from ~~from commencing any new proceedings,~~ and it is further ORDERED ~~in~~  
~~that security on the amount of \$125,000 shall be posted by Aug. 13,~~ ~~book~~  
~~and if~~  
~~is further~~  
ORDERED that personal service of a copy of this order and annexed affirmation

upon Counsel for Quantum, co-defendant National City Mortgage, Inc on or before

August 11, 2008 at 4 p.m.

~~o'clock in the month of~~ ~~on~~, 2008, shall be deemed good and

sufficient service thereof and it is further  
ORDERED that answering and reply papers  
Dated: New York, New York shall be served and filed no later  
August 12, 2008 than Aug. 22 and Aug. 27, respectively.

Entered at  
2:48 pm

Mark A. Green  
United States District Judge

1                   UNITED STATES DISTRICT COURT  
2                   SOUTHERN DISTRICT OF NEW YORK

3  
4                   QUANTUM CORPORATE FUNDING,                   Civil Action No.  
5                   LTD,   08CV00539(LAK)(HBP)  
6                   Plaintiff(s),

7                   -v-    DEPOSITION UPON  
8                   WESTWOOD DESIGN/BUILD                           ORAL EXAMINATION  
9                   INCORPORATED, DAVID R.                       OF  
10                  WARFIELD, NATIONAL CITY                      CRAIG SHEINKER  
11                  MORTGAGE, INC., and PENN  
12                  LYON HOMES CORPORATION,  
13                  Defendant(s).

14                  NATIONAL CITY MORTGAGE, INC.,  
15                  Third-Party  
16                  Plaintiff(s),

17                  -v-  
18                  MICHAEL CONRAD a/k/a MICHAEL  
19                  CONRAD BROWN,  
20                  Third-Party  
21                  Defendant(s).

22                  T R A N S C R I P T of testimony taken  
23                  stenographically by and before LEA A. CRUZ, a  
24                  Certified Court Reporter and Registered Professional  
25                  Reporter, at the offices of GOETZ FITZPATRICK, LLP,  
                     One Penn Plaza, New York, on Friday, August 8, 2008,  
                     commencing at approximately 10:30 a.m.

26

27                  CRUZ & COMPANY, LLC  
28                  Certified Court Reporters  
29                  120 Morris Avenue  
30                  Springfield, New Jersey 07081  
31                  Phone: (973) 467-4123 Fax: (973) 467-8822  
32                  E-mail: info@cruzandcompany.com

## 1 APPEARANCES:

2 SOOTE FITTERPATRICK, LLP  
 One Penn Plaza - 44th Floor  
 New York, New York 10119  
 (212) 895-8100  
 By: BERNARD KORNBLUM, ESG  
 Attorney for the Plaintiff(s)

3 McCARTER & ENGLISH, ESG  
 Four Gateway Center  
 100 Mulberry Street  
 Newark, New Jersey 07102-4056  
 (973) 622-4444  
 By: THOMAS P. DOHERTY, ESG  
 Attorneys for the Defendant(s)/Third-Party  
 Plaintiff(s) National City Mortgage

4 BONNER KIERHAN TREBACH & CHOCIAK, LLP  
 299 Cherry Hill Road - Suite 300  
 Parsippany, NJ 07054  
 (973) 335-8400  
 By: SCOTT R. GOLDSTEIN, ESG  
 Attorneys for the Defendant(s) Penn Lyon Home Corporation

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1 CRAIG SHEINKER, with offices 2115

2 Linwood Avenue, Fort Lee, New Jersey, having been  
 3 duly sworn, testified as follows:

## 4 EXAMINATION BY MR. DOHERTY:

5 Q. Good morning Mr. Sheinker.

6 A. Hi.

7 Q. My name is Tom Doherty and I represent  
 8 National City Mortgage in a lawsuit that's been  
 9 filed by Quantum in Federal Court here in New York,  
 10 and we're here this morning to take your deposition  
 11 in the case.

12 Have you ever had your deposition taken  
 13 before?

14 A. Yes.

15 Q. Can you estimate how many times?

16 A. Four.

17 Q. I'm going to give you some ground rules  
 18 and they may sound familiar to you, but I'll just  
 19 state them anyway so that we're operating on the  
 20 same page.

21 You're going to be asked questions  
 22 today, and you're to answer those questions to the  
 23 best of your ability. The court reporter has sworn  
 24 you in and you're under oath, which means you have  
 25 to tell the truth. Even though we're in a

Sheinker-Doherty

5

1 conference room in a lawyer's office, it still has  
 2 the same serious nature as if we were in court. Do  
 3 you understand that?

4 A. Yes.

5 Q. If you don't know an answer to a  
 6 question I ask, please let me know. We don't want  
 7 you to guess, although an approximation or an  
 8 estimate is okay if you're letting us know that  
 9 that's what you're doing.

10 If you don't understand a question that  
 11 I ask, let me know and I'll try to rephrase it. If  
 12 you answer the question, we're going to assume that  
 13 you understood it. Do you understand that?

14 A. Yes.

15 Q. Because the court reporter is taking  
 16 everything down, it would be important for you and I  
 17 not to talk over one another, so if you can, wait  
 18 until I finish with the question before answering,  
 19 and then I'll wait before asking another question  
 20 while you're answering. For the same reason, your  
 21 answers have to be verbal. Even though it may seem  
 22 like we're having a conversation, it's important  
 23 that you not just nod or shake your head, that you  
 24 answer verbally so the court reporter can take that  
 25 down.

## 1 INDEX

| 2 WITNESS NAME    | PAGE    |
|-------------------|---------|
| 3 CRAIG SHEINKER  |         |
| 4 By: MR. DOHERTY | 4, 111  |
| 5 MR. GOLDSTEIN   | 28, 145 |

## 6 EXHIBITS

| 7 NO.   | DESCRIPTION  | PAGE |
|---|--|------|
| 8 0-18  | Affidavit in support of motion<br>for summary judgment   | 13   |
| 9 0-20  | One-page certificate of officers<br>agreement and corporate resolution<br>dated September 10, 2001 | 51   |
| 10 Penn Lyon-2                                      |  | 111  |
| 11 One page document from Sterling<br>National Bank |  | 111  |
| 12 Penn Lyon-3                                      |  | 133  |
| 13 One page check/wire request                      |  | 133  |

## 14 REQUESTS

| 15 PAGE   | 16 LINE |
|-----------|---------|
| 17 (None) |         |

1 If you need to take a break to stretch  
 2 your legs or get a drink or use the restroom, let's  
 3 us know. It's not an endurance test.

4 Do you understand all those grounds  
 5 rules?

6 A. Yes.

7 Q. Are you taking any kind of medication  
 8 that would affect your ability to testify --

9 A. No.

10 Q. at this deposition?

11 A. No.

12 MR. KOBROFF: Let him finish the  
 13 question.

14 Q. Can you please let me know what your  
 15 age is.

16 A. 47.

17 Q. What's your marital status?

18 A. Married.

19 Q. How long have you been married? You  
 20 can approximate.

21 A. About seven years.

22 Q. Can you please describe for me your  
 23 educational background.

24 A. College, BS, finance and international  
 25 business, NYU.

Sheinker - Doherty

7

1 Q. Do you have any graduate degrees?

2 A. No.

3 Q. Do you have any training in the law?

4 A. No.

5 Q. You indicated before that you've been  
 6 deposed approximately four times. Could you please  
 7 describe for me very briefly what those four  
 8 occasions were where you were deposed.

9 A. That was just an approximation. I  
 10 really -- I can't give you the specifics because I  
 11 don't recall the number of times. It's an  
 12 approximation.

13 Q. And what kind of cases were those where  
 14 you had your deposition taken?

15 A. Civil litigation.

16 Q. Were those civil litigation matters  
 17 instances where you were suing somebody or you were  
 18 being sued?

19 A. Collection matters.

20 Q. Were those collection matters something  
 21 that you were pursuing as an individual or were they  
 22 because of a business?

23 A. Corporate. Business.

24 Q. And what business was that?

25 A. Primarily the factoring business.

1 Also we do -- oh, I didn't have depositions. We  
 2 also do real estate lending, but I don't recall any  
 3 depositions for any of those foreclosures.

4 Q. Have you ever been arrested?

5 A. No.

6 MR. KOBROFF: Objection to form.

7 Q. Do you have any criminal convictions?

8 A. Nope.

9 Q. In connection with the deposition this  
 10 morning, have you reviewed any documents?

11 A. Yes.

12 Q. Can you tell me what you reviewed?

13 A. My affidavit.

14 Q. Which one?

15 A. Both.

16 Q. Did you review anything else?

17 A. The interrogatories.

18 MR. DOHERTY: Speaking of which, let  
 19 me just put on the record that we've not yet  
 20 received interrogatory answers from Quantum, and so  
 21 once I receive them, I'd like to reserve my right,  
 22 if necessary, it may not be, to continue this  
 23 deposition at that point.

24 MR. GOLDSTEIN: I join in that  
 25 request.

Sheinker - Doherty

9

1 MR. KOBROFF: I finally have had a  
 2 chance to review them, as Mr. Sheinker has noted,  
 3 and I will be sending them out if not today, Monday.

4 MR. DOHERTY: Thank you.

5 BY MR. DOHERTY:

6 Q. Besides Quantum's lawyer, have you  
 7 spoken to anybody about this case?

8 A. Yes.

9 Q. Who have you spoken to about this case?

10 A. Maria.

11 Q. Who is Maria?

12 A. Maria DeSouza. I believe you deposed  
 13 her yesterday.

14 Q. Have you spoken to Ms. DeSouza since  
 15 yesterday?

16 A. Yes.

17 Q. When did you speak to Ms. DeSouza?

18 A. Last night.

19 Q. Was that by telephone or in person?

20 A. By telephone.

21 Q. And what did you and Ms. DeSouza talk  
 22 about?

23 A. I just said, How did it go?

24 Q. And what did she say?

25 A. She says, I can't discuss it with you.



1 have looked at, that's why.

2 But other than that, do you recognize  
3 this affidavit?

4 A. Yes.

5 Q. And on page 6 of D-14, is that your  
6 signature?

7 A. Yes.

8 Q. Is this the affidavit you were just  
9 referring to when you said that if you looked at  
10 your affidavit it would help you to determine what  
11 day --

12 A. Yes.

13 Q. With it in front of you, does it help  
14 you?

15 A. Yes.

16 Q. What day then were you referring to?

17 A. On or about January 11.

18 Q. January 11 then is the day that you  
19 first realized that the transaction that's the  
20 subject matter of this lawsuit was fraudulent?

21 A. On or about January 11, yeah.

22 Q. And you think that was the day that you  
23 spoke with David Long of National City?

24 A. Yes.

25 Q. What do you recall about that

1 Q. What did Mr. Long say to you in  
2 response?

3 A. He'd look into it.

4 Q. Do you remember anything else about  
5 this conversation with David Long?

6 A. No. By the way, you asked me if I --  
7 what was the question that started off this series,  
8 if I had communication with anybody at the bank?

9 Q. Well, I asked you I think if you spoke  
10 to them. I was going to ask you a separate question  
11 about whether you had written communications.

12 A. Okay.

13 Q. Did you ever hear back from Mr. Long  
14 after you say that he told you he'd look into it?

15 A. Not that I can recall.

16 Q. Did you have any written communications  
17 with anyone at National City, which would include  
18 e-mail or letters?

19 A. Yes.

20 Q. What written conversations do you  
21 recall having with any employees of National City?

22 A. I had an e-mail to and I think -- an  
23 e-mail to Timothy Justice.

24 Q. Do you remember when you sent that  
25 e-mail to Mr. Justice?

Sheinkin - Doherty

15

Sheinkin - Doherty

17

1 conversation with David Long?

2 A. I remember being on my cell phone,  
3 because I had left the office. I was headed home.  
4 I pulled off into a storefront because of traffic so  
5 I could hear clearly and just -- just had a  
6 discussion with him about the serious consequences  
7 of what I've uncovered and what the bank's  
8 potential -- the bank's liability is under the  
9 circumstances.

10 Q. What were the consequences that you  
11 said that -- let me ask it a different way.

12 Did you tell him what you meant by  
13 serious consequences of what you uncovered?

14 A. Yes.

15 Q. What did you believe you uncovered?

16 A. That we received an invoice which we  
17 funded against based upon a reliance of an estoppel  
18 certificate signed by an authorized representative  
19 of the bank and that it now appears that the  
20 invoice, which was a substantial amount of money,  
21 relatively speaking, was bogus and that the bank has  
22 significant liability here.

23 Q. And all of what you've just said, this  
24 is what you were telling Mr. Long?

25 A. Yes.

1 A. It was -- I believe it was in early  
2 January.

3 Q. Do you think it was before or after  
4 your telephone conversation with David Long?

5 A. I believe it was before, but I could  
6 be wrong.

7 Q. Do you have any tape-recordings of any  
8 conversations with Mr. Long or anyone from National  
9 City?

10 A. No.

11 Q. Do you have any voice mail messages  
12 saved from anyone at National City?

13 A. No.

14 Q. Do you have tape-recordings from  
15 conversations with any of the other parties in this  
16 lawsuit, which would include Westwood, David  
17 Warfield, anyone from Penn Lyon Homes or Michael  
18 Conrad?

19 A. No.

20 Q. At Quantum, what's your title?

21 A. President.

22 Q. Are you also the owner of Quantum?

23 A. Yes, partial owner.

24 Q. What's your ownership percentage?

25 A. One-third.

1 Q. Who are the other two-thirds owners in  
2 Quantum?

3 A. **My two sisters.**

4 Q. And what are your sisters' names?

5 A. **Kerrie Sheinker, K-e-r-r-i-e, and**  
**Taryn Chernin, C-h-e-r-r-n-i-n.**

6 Q. When was Quantum established?

7 A. **1991.**

8 Q. Where was it incorporated?

9 A. **New York.**

10 Q. Is it still in good standing as a  
11 corporation in New York?

12 A. **Yes.**

13 Q. Have you always been president of  
14 Quantum?

15 A. **Yes.**

16 Q. Do you hold any other titles at  
17 Quantum?

18 A. **No.**

19 Q. Have you ever held any other title at  
20 Quantum?

21 A. **No.**

22 Q. Can you describe for me what Quantum's  
23 business is.

24 A. **Finance company.**

1 Q. Can you describe some of those chief  
2 executive duties.

3 A. **Isn't that a description?**

4 Q. Well, can you give me some examples of  
5 what you do as chief executive.

6 A. **Approve budget, approve hiring to some**  
7 **degree. I'm the chief executive. I don't -- you**  
8 **know, anything that rises to the level of a chief**  
9 **executive responsibility becomes my responsibility,**  
10 **and sometimes those matters are large**  
11 **macro-strategic matters and sometimes they're**  
12 **smaller. But that would be I guess sort of like**  
13 **asking -- you know, there are a lot of**  
14 **responsibilities, but they change on a daily basis.**

15 Q. You mentioned that you had -- you would  
16 approve hiring in some instances. Do you recall  
17 being involved in the hiring of Maria DeSouza?

18 A. **Yes.**

19 Q. What was your role in the hiring of Ms.  
20 DeSouza?

21 A. **I hired her.**

22 Q. Do you know when Ms. DeSouza was hired?

23 A. **I think it was in '07.**

24 Q. Can you approximate what part of '07?

25 A. **I would say probably April, May, but**

Sheinker - Doherty

19

Sheinker - Doherty

21

1 Q. And what kind of things does Quantum  
2 finance?

3 A. **What kind of things? We do**  
**asset-based lending and factoring.**

5 Q. Do you do business outside of the state  
6 of New York?

7 A. **No.**

8 Q. Where are Quantum's offices currently  
9 located?

10 A. **I shouldn't say that. Now that we**  
11 **moved we, I guess -- we just moved to New Jersey so**  
12 **the answer to that would have to be yes, but that**  
13 **was three weeks ago.**

14 Q. Is Quantum registered to do business in  
15 the state of Maryland?

16 A. **I don't believe so. No.**

17 Q. Does Quantum have any licenses issued  
18 by the state of Maryland?

19 A. **No.**

20 Q. As president, what are your duties and  
21 responsibilities?

22 A. **Chief executive.**

23 Q. As chief executive what are your  
24 duties?

25 A. **Chief executive duties.**

1 **that's just a rough approximation.**

2 Q. Do you know what Ms. DeSouza's  
3 background was?

4 A. **Yes.**

5 Q. What was that?

6 A. **She worked for a mortgage company.**

7 Q. Did you seek any references from that  
8 mortgage company before you hired Ms. DeSouza?

9 A. **No.**

10 Q. Were you involved at all in training  
11 Ms. DeSouza for her work at Quantum?

12 A. **Tangentially.**

13 Q. And in what way were you tangentially  
14 involved in training Ms. DeSouza?

15 A. **Occasionally I'd be asked for advice**  
16 **and I would provide it.**

17 Q. Asked for advice by Ms. DeSouza?

18 A. **Mmm-hmm.**

19 Q. Do you know who was more involved in  
20 training Ms. DeSouza since you were only

21 tangentially involved?

22 A. **Shelley Simmonds.**

23 Q. How long has Ms. Simmonds been employed  
24 by Quantum?

25 A. **At least -- at least five years.**

1 Q. And what's Ms. Simmonds' title?

2 A. Senior account executive.

3 Q. How many account executives work at  
4 Quantum?

5 A. Two.

6 Q. Who's the other account executive  
7 besides Ms. Simmonds?

8 A. Ms. DeSouza.

9 Q. How many employees altogether does  
10 Quantum have?

11 A. About 12, 13.

12 Q. Does Quantum have any written training  
13 materials that it provides to new employees?

14 A. No. Strike that.

15 I -- as I mentioned I'm tangentially  
16 involved in that aspect, so I'm sure that there may  
17 be some written documents that Shelley Simmonds  
18 would know about.

19 Q. Is Ms. DeSouza paid a salary?

20 A. Yes.

21 Q. Does she receive any compensation based  
22 on the outcome of Quantum's dealings with those  
23 people that come to engage in factoring or  
24 asset-based lending?

25 A. No.

Sheinker - Doherty

23

1 Q. Have there been any complaints made  
2 about Ms. DeSouza's performance by any customers  
3 since she's been working for the company?

4 A. No.

5 Q. Has Ms. DeSouza had any performance  
6 reviews?

7 A. No.

8 Q. Does Quantum have a process in place  
9 for conducting background checks of the people and  
10 entities that seek to engage in factoring or  
11 asset-based lending with it?

12 A. Oh, on our client, you mean?

13 Q. Yes.

14 A. Yeah.

15 Q. Can you describe what that process is  
16 for doing a background check on a client.

17 A. A Dun & Bradstreet report typically  
18 and a UCC search. And it really varies tremendously  
19 based upon the nature of the transaction. Sometimes  
20 credit reports.

21 Q. In what instances will you decide to  
22 run a credit report besides also doing the D&B and  
23 UCC search?

24 A. It really depends upon the  
25 circumstances.

1 Q. What level involvement do you have in

2 doing background searches on prospective clients of  
3 Quantum?

4 A. I generally don't get involved, but  
5 I'm -- you know, any decision that comes up to my  
6 level, I would request what information was  
7 available, and I may request additional information  
8 to be provided.

9 Q. Does Quantum have any procedures in  
10 place to detect whether there's fraud going on with  
11 any client?

12 A. Absolutely.

13 Q. What procedures does Quantum have to  
14 detect fraud on the part of clients?

15 A. The most significant one is invoice  
16 verification.

17 Q. What does that involve?

18 A. Verifying the invoices.

19 Q. Who do you verify invoices with?

20 A. Account debtors, customers of our  
21 clients, people that are being billed. We need to  
22 verify the invoices.

23 Q. How do you assess who an account debtor  
24 is of your prospective client?

25 A. Generally it's the person who is

Sheinker - Doherty

25

1 paying.

2 Q. To your knowledge, Quantum engaged in a  
3 transaction with Westwood Design/Build?

4 A. Yes.

5 Q. Were you involved at all in any of the  
6 background checking on Westwood?

7 A. Well, I had a preliminary meeting with  
8 Warfield and Conrad. I made inquiries as to their  
9 background. I think we pulled a credit report on  
10 either or both. If I recall, the credit was not --  
11 not very good, but very often people come to us  
12 because they can't get financing at a conventional  
13 lending institution.

14 Q. When you say you think you ran a credit  
15 report on either or both Warfield or Conrad, would  
16 your records show whether you ran a credit report on  
17 both?

18 A. Not my records, my personal records,  
19 no, but the company has records to that effect.

20 Q. And would those records -- would

21 Quantum's records be kept in a folder that would be  
22 attributable to Westwood?

23 A. I'm sure they would.

24 Q. Do you keep any personal folders, like  
25 sort of a working folder, --

1       A.    **No.**  
 2       Q.    -- in your work at Quantum?  
 3       A.    **No.**  
 4       Q.    You mentioned a preliminary meeting  
 5   with Warfield and Conrad. Where did that meeting  
 6   take place?  
 7       A.    **In my office, my conference room.**  
 8       Q.    And was that when Quantum was still  
 9  operating in New York?  
 10      A.    **Yes.**  
 11      Q.    Can you estimate or approximate when  
 12 that meeting took place, unless you know the exact  
 13 date?  
 14      A.    **No, I don't know the exact date. It**  
 15 **was toward the end of 2007.**  
 16      Q.    Did this meeting take place --  
 17      A.    **Was it '07 or '06?**  
 18      MR. KOBROFF: Give your best  
 19 recollection.  
 20      A.    **It was the end of '07.**  
 21      Q.    Did that meeting take place before or  
 22 after Westwood had signed any agreement with  
 23 Quantum?  
 24      A.    **Pardon?**  
 25      Q.    Did that meeting take place before or

Sheinker - Doherty

27

1 after Westwood signed any kind of agreement --  
 2       A.    **Before. Before.**  
 3       Q.    Just so the record is clear, it was  
 4 before any agreement was signed between Westwood and  
 5 Quantum?  
 6       A.    **Yes.**  
 7       Q.    Who did you understand Warfield to be  
 8 in connection with Westwood?  
 9       A.    **I believed he was one of the**  
 10 **principals.**  
 11      Q.    And who was Conrad?  
 12      A.    **One of the principals.**  
 13      Q.    When you say principals, you mean they  
 14 were owners of the company?  
 15      A.    **Officers.**  
 16      Q.    Did Conrad introduce himself as Conrad?  
 17      A.    **Yes.**  
 18      Q.    Did he use any other name?  
 19      A.    **No.**  
 20      Q.    Was anyone else present for this  
 21 meeting with Warfield and Conrad?  
 22      A.    **Yes.**  
 23      Q.    Who else was present?  
 24      A.    **Toby Wilkins.**  
 25      Q.    Who is Toby Wilkins?

1       A.    **She was the new business development**  
 2 **person responsible for introducing them to the**  
 3 **company.**  
 4       Q.    Is Ms. Wilkins still employed by  
 5 Quantum?  
 6       A.    **Yes.**  
 7       Q.    Was anyone else present besides you,  
 8 Ms. Wilkins, Warfield, and Conrad?  
 9       A.    **No.**  
 10      Q.    Can you recall how long this meeting  
 11 lasted?  
 12      A.    **I'd say about 40 minutes.**  
 13      Q.    Is it typical that you would meet with  
 14 the principals of a client before doing business  
 15 with them?  
 16      A.    **Depends what you mean, typical. What**  
 17 **I mean by that is typical meaning 20 percent of the**  
 18 **time? 25 percent of the time? Occasionally. I**  
 19 **would say occasionally.**  
 20      Q.    And by occasionally you mean about 20  
 21 to 25 percent **of** the time?  
 22      A.    **Yeah, approximately.**  
 23      Q.    Was there any particular reason why you  
 24 opted to meet with Warfield and Conrad for this  
 25 proposed transaction?

Sheinker - Doherty

29

1       A.    **It was at the request of Toby --**  
 2      MR. KOBROFF: Objection to form.  
 3       Q.    You can answer.  
 4       A.    **At the request of Toby Wilkins.**  
 5       Q.    Did Ms. Wilkins indicate why she wanted  
 6 you to meet with Warfield and Conrad?  
 7       A.    **The transaction was one that she**  
 8 **thought that required my attention, extra attention,**  
 9 **my extra attention.**  
 10      Q.    Did **she** say why she felt it required  
 11 your extra attention?  
 12      A.    **Well, it's one that we don't generally**  
 13 **do. It's not -- I don't recall having ever done a**  
 14 **modular home builder in our company.**  
 15      Q.    Was there anything else about this  
 16 transaction that was unusual for Quantum?  
 17      A.    **No.**  
 18      Q.    Had Quantum engaged in other  
 19 transactions where a construction loan was involved?  
 20      A.    **Quantum is regularly involved in**  
 21 **factoring for construction contractors.**  
 22      Q.    When Quantum is engaged in transactions  
 23 with construction contractors, are there instances  
 24 where a mortgage lender is being asked to sign any  
 25 kind of paperwork to verify payment?

1       A.    Rarely.

2       Q.    Can you think of any instances where --  
3   you say it's rarely.

4       A.    No, I can't think of any.

5       Q.    Do you have an understanding of how a  
6 construction loan works?

7       A.    Yes.

8       Q.    What's your understanding?

9       A.    Advances are made based upon  
10 completion, stages of completion.

11      Q.    And who are the advances made by?

12      A.    The lender.

13      Q.    And what's your understanding of whose  
14 money is being advanced by the lender?

15      A.    The bank's.

16      Q.    You don't believe it's the borrower's  
17 funds that are being advanced by the lender?

18      A.    A check is drawn on the bank, on the  
19 bank's bank account, on the bank's check, to my  
20 understanding and experience.

21      Q.    Do you believe that the bank winds up  
22 owning the home that's being built by a construction  
23 contractor?

24      A.    These days a lot of that is going on.

25      Q.    Putting aside the possibility of

1       Q.    Rather than saying they, what did

2 Warfield tell you and then what did Conrad tell you,  
3 and tell me which one is telling you which?

4       A.    My recollection was that Warfield  
5 said -- not Warfield, that Conrad said he was an  
6 architect.

7       Q.    Did he say anything else about his  
8 background?

9       A.    No, just that he's a home builder and,  
10 you know, modular homes.

11      Q.    Did he tell you how long he'd been in  
12 the business of home building?

13      A.    Not that I can -- I don't recall  
14 whether he told me how long he'd been in the  
15 business.

16      Q.    Do you know how long Westwood  
17 Design/Build had been in business as of the time  
18 that you met with them in 2007?

19      A.    I don't recall.

20      Q.    Is that something that you would have  
21 looked into before entering into any kind of  
22 agreement with Westwood?

23            MR. KOBROFF: By "you," you mean him  
24 or Quantum?

25            MR. DOHERTY: Quantum. I'm sorry.

Sheinker - Doherty

31

Sheinker - Doherty

33

1 foreclosures, in the non-foreclosure setting, is it  
2 your understanding that the bank owns the home  
3 that's being -- that it's advancing funds on --

4       A.    No.

5       Q.    -- with the construction process?

6       A.    No.

7       Q.    You indicated that the meeting with  
8 Conrad and Warfield lasted about 40 minutes. Can  
9 you tell me as best as you can recall what was  
10 discussed at that meeting?

11      A.    I basically explained to him what our  
12 condition would be for being able to provide  
13 factoring services.

14      Q.    And what was that condition?

15      A.    An estoppel certificate signed for by  
16 the bank verifying the amount due and their  
17 obligation to pay it, pay for the work, the stage of  
18 work completed, come hell or high water.

19      Q.    And what did Warfield and Conrad say in  
20 response to that?

21      A.    They would try and see if they could  
22 get that accomplished from the bank.

23      Q.    Did you discuss with them what their  
24 backgrounds were, what their experience was?

25      A.    Yes.

1       A.    Not necessarily.

2       Q.    Do you recall what Warfield said to you  
3 about his background?

4       A.    I don't recall.

5       Q.    Can you describe what Conrad looked  
6 like?

7       A.    He was black and clean cut, articulate  
8 and intelligent.

9       Q.    And what did Warfield look like?

10      A.    White, less clean cut, and didn't  
11 speak very much.

12      Q.    Did Conrad and Warfield tell you  
13 whether they were related in any way by marriage  
14 or --

15      A.    No.

16      Q.    So you said you explained the condition  
17 to them upon which Quantum would engage in a  
18 transaction. Conrad and Warfield said they'd try to  
19 accomplish. You found out a little bit about the  
20 background of Conrad. What else do you recall from  
21 the meeting that you had with Warfield and Conrad?

22      A.    That was it.

23      Q.    Did they tell you why they were looking  
24 to engage in this transaction with Quantum as  
25 opposed to a more conventional funding source?



1 Avenue, Lanham, Maryland."  
 2 Did I read that correctly?  
 3 A. Yes.  
 4 Q. Was National City a signatory to the  
 5 contract between the Polydore and Westwood?  
 6 A. I don't believe so.  
 7 Q. Where did you get -- where did Quantum  
 8 get the contract from Polydore and Westwood?  
 9 A. That's not directly within my  
 10 knowledge. I'm sure that someone from my office got  
 11 that.  
 12 Q. Did you review the Westwood/Polydore  
 13 contract before Quantum entered into an agreement  
 14 with Westwood for this project?  
 15 A. No.  
 16 Q. At the bottom of Paragraph 4 it says,  
 17 "A copy of the National/Polydore construct loan  
 18 agreement is annexed hereto as Exhibit B."  
 19 Do you know where -- who the source was  
 20 that gave those papers that are attached as Exhibit  
 21 B to your affidavit to Quantum?  
 22 A. No. I assume --  
 23 MR. KOBROFF: Don't assume.  
 24 A. Well, I don't want to assume.  
 25 MR. KOBROFF: Don't assume.

Sheinker - Doherty 39

1 Q. Did you review the documents that are  
 2 attached as Exhibit B to this affidavit prior to  
 3 Quantum entering into an agreement with Westwood for  
 4 the Polydore project?  
 5 A. No.  
 6 Q. Have you reviewed the document that's  
 7 attached as Exhibit B to your affidavit at any time?  
 8 A. Yes.  
 9 Q. When was the first time you reviewed  
 10 the document that you describe as a copy of the  
 11 National/Polydore construct loan agreement?  
 12 A. Sometime after discovering the fraud.  
 13 Q. Were you being kept apprised by any  
 14 employees of Quantum as to what was going on between  
 15 Quantum and Westwood in the year 2007 after your  
 16 meeting with Warfield and Conrad?  
 17 A. Tangentially.  
 18 Q. Who was keeping you posted on what was  
 19 happening with Westwood?  
 20 A. Maria.  
 21 Q. What do you recall Maria keeping you  
 22 posted about with respect to Westwood?  
 23 A. The new transactions, the state of the  
 24 sign-off. Wilmer was updating me with respect to  
 25 collections, and Toby was updating me with respect

Sheinker - Doherty 40

1 to new requests.  
 2 Q. New requests by Westwood?  
 3 A. Yeah.  
 4 Q. Who's Wilmer?  
 5 A. She's our collections person. Wilmer  
 6 Russell, W-i-l-m-e-r Russell.  
 7 Q. Do you recall what Maria was telling  
 8 you when she was keeping you posted on transactions  
 9 with Westwood?  
 10 A. Did you get the sign-off?  
 11 Q. And what does that mean?  
 12 A. The estoppel certificate.  
 13 Q. Why do you call it an estoppel  
 14 certificate?  
 15 A. My attorney advises me that's what it  
 16 is.  
 17 Q. Does Quantum describe that document as  
 18 an estoppel certificate in its communications with  
 19 those entities that it wishes to have sign the  
 20 document?  
 21 MR. DOHERTY: Let the record reflect  
 22 that Mr. Kobroff is pointing out something in the  
 23 document to the witness.  
 24 A. I opened the page to this. Mr.  
 25 Kobroff didn't point to the page that I opened. Let

Sheinker - Doherty 41

1 the record reflect that.  
 2 MR. GOLDSTEIN: Just for economy's  
 3 sake, do you want to use the actual exhibit if he's  
 4 going to refer to it, or do you want to refer to it  
 5 within this?  
 6 MR. KOBROFF: What exhibit are we  
 7 referring to?  
 8 Q. If the witness is looking at a page  
 9 from D-14, I'd ask him to let me know what page, and  
 10 I guess the easiest way to do that is identifying it  
 11 from the top of the page. There's indications like  
 12 page 23 of 70 or something along those lines.  
 13 A. Page 28 of 70.  
 14 Q. And what is page 28 of 70 that you're  
 15 looking at?  
 16 A. The estoppel certificate.  
 17 Q. I think I was asking, does Westwood  
 18 describe --  
 19 MR. KOBROFF: Objection. Does  
 20 Westwood describe?  
 21 MR. DOHERTY: Good point. Good  
 22 objection. I agree with that one.  
 23 Q. Does Quantum describe a letter such as  
 24 which appears at page 28 of 70 within D-14, does  
 25 Quantum describe letters such as this as an estoppel

1 certificate to those persons or entities that it  
2 asks to sign it?

3       **A. The last sentence refers to this as an  
4 estoppel.**

5       **Q. Does it say anything in this document  
6 that says this is an estoppel certificate?**

7       **A. It says "this estoppel."**

8       **Q. Does the word certificate appear?**

9       **A. No.**

10      **Q. Did Ms. DeSouza talk to you about any  
11 conversations that she was having with anyone at  
12 National City about asking National City to sign the  
13 document that we're referring to, 28 of 70 within  
14 D-14?**

15      **A. Most of her conversations were with  
16 Shelley Simmonds, but my conversation with her was  
17 to make sure that she got verification of the  
18 authority of the person signing off, and that's it.**

19      **Q. And what did Ms. DeSouza say to you  
20 about that issue that you were requesting her to  
21 follow up on?**

22      **A. She confirmed that she got multiple  
23 verifications, multiple such verifications.**

24      **Q. Did you ever direct her to confirm  
25 those verifications in writing?**

1       **A. I don't recall.**

2       **Q. Did Ms. DeSouza describe to you any  
3 other information that she claims to have learned  
4 from National City in phone conversations with  
5 National City employees?**

6       **A. No, not that I can recall.**

7       **Q. Did you speak with Shelley Simmonds  
8 about the status of the Westwood transactions?**

9       **A. Tangentially.**

10      **Q. Can you describe for me what you recall  
11 of the discussions you had with Ms. Simmonds about  
12 the Westwood transactions?**

13      **A. General conversations with respect to  
14 general issues surrounding the transactions at hand.**

15      **Q. Did Ms. Simmonds recount to you any  
16 conversations that she may have had with anyone at  
17 National City?**

18      **A. Not that I can recall. I mean, not  
19 that I can -- yes, but I can't recall the sum and  
20 substance of those conversations.**

21      **Q. Were the updates that you were  
22 receiving from Ms. DeSouza, Wilmer Russell, Toby  
23 Wilkins and Shelley Simmonds, were those updates all  
24 verbal or were any of them in writing?**

25      **A. Verbal.**

1       **Q. To your knowledge, did Ms. DeSouza ever  
2 keep you posted on the Westwood transactions by  
3 e-mail or by memo?**

4       **A. Not that I can recall.**

5       **Q. Did Ms. Russell keep you posted on  
6 Westwood transactions by e-mail or by memo?**

7       **A. Not that I can recall.**

8       **Q. Did Ms. Wilkins keep you posted on  
9 Westwood transactions by e-mail or by memo?**

10      **A. Once again, not that I can recall.**

11      **Q. The same answer as to Ms. Simmonds,  
12 e-mail or memos?**

13      **A. I guess the overall answer is that I  
14 don't recall specific e-mails.**

15      **Q. How about memos?**

16      **A. Well, no, we don't generally do memos.**

17      **Q. The page you were just looking at, I  
18 guess you're still open to it, in D-14, what you  
19 call the estoppel certificate, did you review this  
20 document when it came in from National City?**

21      **A. No.**

22      **Q. When was the first time you had  
23 occasion to look at the document that's attached to  
24 your affidavit that's 28 of 70 in this exhibit?**

25      **A. I don't recall.**

1       **Q. The two pages prior to the page you're  
2 looking at, 26 of 70, and we're still within Exhibit  
3 D-14, do you recognize that document as something  
4 you saw before the lawsuit in this case was filed?**

5       **A. No.**

6       **Q. So the first time you would have seen  
7 this document was after the lawsuit was -- when the  
8 lawsuit was being prepared?**

9       **A. Yes. Probably.**

10      **Q. Do you know who supplied that page 26  
11 of 70 to Quantum?**

12      **A. I don't have personal knowledge who  
13 supplied it to Quantum.**

14      **Q. Who do you believe supplied it to  
15 Quantum?**

16      **THE WITNESS: Is that something you  
17 want me to answer, who I believe supplied it to  
18 Quantum?**

19      **MR. KOBROFF: Why don't you rephrase  
20 the question.**

21      **Q. Is it your understanding that Quantum  
22 received that document from Westwood?**

23      **A. Yes.**

24      **Q. Does Quantum have a practice of  
25 telephoning its clients, customers, to determine**

1 whether services have been rendered or goods have  
 2 been furnished?

3 A. Yes.

4 Q. Is that a process that your employees  
 5 are directed to do on every transaction?

6 A. No.

7 Q. In what transactions are your employees  
 8 supposed to reach out to the customer ~~of~~ your client  
 9 by telephone?

10 A. Heavy concentration.

11 Q. What does that mean?

12 A. Where you have -- as an example, if we  
 13 have one client that has a thousand customers and  
 14 the average invoice is a hundred dollars, we're not  
 15 calling a thousand customers and getting written  
 16 verification; but where you have one invoice of  
 17 substance with a substantial concentration such as  
 18 you have here, then we are almost indefinitely gonna  
 19 get a written verification in the form of an  
 20 estoppel certificate.

21 Q. What about a telephone verification?

22 A. Telephone verification may be done in  
 23 addition, and as I mentioned, where you have a  
 24 widely diverse schedule of accounts you may do  
 25 spot-checking, verbal conversations. There are a

1 recollection, it was the same date we discovered  
 2 that there was a fraud, which I think I stated  
 3 earlier was on or about January 11, 2008.

4 Q. Do you know who reached out to the  
 5 Polydiores?

6 A. Wilmer Russell.

7 Q. How do you know that?

8 A. Because she told me.

9 Q. Did Ms. Russell tell you what she  
 10 learned from reaching out to the Polydiores?

11 A. Yes.

12 Q. What did she learn?

13 A. That not only were there no boxes --  
 14 when I say "boxes" I mean the pre-fabricated modular  
 15 home components -- delivered, but that the land  
 16 wasn't cleared either and that she -- period.

17 That's the end.

18 Q. Do you remember anything else from your  
 19 conversation with Ms. Russell about her conversation  
 20 with the Polydiores?

21 THE WITNESS: Could you read back the  
 22 question, two preceding questions, go back two.

23 (Last five questions and four answers  
 24 are read back by the court reporter.)

25 A. You mean when was the first time

1 host of applicable verification procedures that  
 2 could be employed given the circumstances.

3 Q. From your meeting with Warfield and  
 4 Conrad, was it your understanding that they were  
 5 building homes that would be owned by National City  
 6 Mortgage?

7 A. I think we answered that already.

8 Q. Do you know the answer?

9 A. I think I answered the question  
 10 already.

11 THE WITNESS: Did I answer that  
 12 question already.

13 MR. KOBROFF: Yes, I think you did.  
 14 It's been asked and answered. Why don't you  
 15 rephrase it differently.

16 Q. Did Quantum make any effort to reach  
 17 out to Eustace Polydore to determine whether  
 18 Westwood delivered a home to the Polydiores?

19 MR. KOBROFF: At what time are we  
 20 talking about?

21 MR. DOHERTY: At any time.

22 A. Yes.

23 Q. When did Quantum reach out to the  
 24 Polydiores?

25 A. I believe it was --- my

1 Quantum reached out to the Polydiores?

2 Q. Yes.

3 A. Okay. That was the answer.

4 Q. Were there additional times that  
 5 Quantum reached out to the Polydiores?

6 A. Yes.

7 Q. When were those other occasions and who  
 8 was involved?

9 A. After this I had multiple  
 10 conversations with Mrs. Polydore and her attorney.

11 Q. Who was the attorney for the  
 12 Polydiores?

13 A. I don't recall her name.

14 Q. What do you recall of your  
 15 conversations with Mrs. Polydore?

16 A. That Michael Conrad is a con man and  
 17 that I believe he even counterfeited a building --  
 18 building permit or something along those lines, some  
 19 kind of building permit which enabled him to draw

20 perhaps on the bank's loan prior thereto, but he  
 21 counterfeited some kind of a county document is what

22 I was told.

23 Q. Anything else you recall from your  
 24 conversations with Mrs. Polydore?

25 A. She was very distraught. She was

1 whether services have been rendered or goods have  
 2 been furnished?

3 A. Yes.

4 Q. Is that a process that your employees  
 5 are directed to do on every transaction?

6 A. No.

7 Q. In what transactions are your employees  
 8 supposed to reach out to the customer ~~of~~ your client  
 9 by telephone?

10 A. Heavy concentration.

11 Q. What does that mean?

12 A. Where you have -- as an example, if we  
 13 have one client that has a thousand customers and  
 14 the average invoice is a hundred dollars, we're not  
 15 calling a thousand customers and getting written  
 16 verification; but where you have one invoice of  
 17 substance with a substantial concentration such as  
 18 you have here, then we are almost indefinitely gonna  
 19 get a written verification in the form of an  
 20 estoppel certificate.

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 23 addition, and as I mentioned, where you have a  
 24 widely diverse schedule of accounts you may do  
 25 spot-checking, verbal conversations. There are a

1 recollection, it was the same date we discovered  
 2 that there was a fraud, which I think I stated  
 3 earlier was on or about January 11, 2008.

4 Q. Do you know who reached out to the  
 5 Polydiores?

6 A. Wilmer Russell.

7 Q. How do you know that?

8 A. Because she told me.

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 10 learned from reaching out to the Polydiores?

11 A. Yes.

12 Q. What did she learn?

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 14 when I say "boxes" I mean the pre-fabricated modular  
 15 home components -- delivered, but that the land  
 16 wasn't cleared either and that she -- period.

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 19 conversation with Ms. Russell about her conversation  
 20 with the Polydiores?

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 22 question, two preceding questions, go back two.

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 24 are read back by the court reporter.)

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1 host of applicable verification procedures that  
 2 could be employed given the circumstances.

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 4 Conrad, was it your understanding that they were  
 5 building homes that would be owned by National City  
 6 Mortgage?

7 A. I think we answered that already.

8 Q. Do you know the answer?

9 A. I think I answered the question  
 10 already.

11 THE WITNESS: Did I answer that  
 12 question already.

13 MR. KOBROFF: Yes, I think you did.  
 14 It's been asked and answered. Why don't you  
 15 rephrase it differently.

16 Q. Did Quantum make any effort to reach  
 17 out to Eustace Polydore to determine whether  
 18 Westwood delivered a home to the Polydiores?

19 MR. KOBROFF: At what time are we  
 20 talking about?

21 MR. DOHERTY: At any time.

22 A. Yes.

23 Q. When did Quantum reach out to the  
 24 Polydiores?

25 A. I believe it was --- my

1 Quantum reached out to the Polydiores?

2 Q. Yes.

3 A. Okay. That was the answer.

4 Q. Were there additional times that  
 5 Quantum reached out to the Polydiores?

6 A. Yes.

7 Q. When were those other occasions and who  
 8 was involved?

9 A. After this I had multiple  
 10 conversations with Mrs. Polydore and her attorney.

11 Q. Who was the attorney for the  
 12 Polydiores?

13 A. I don't recall her name.

14 Q. What do you recall of your  
 15 conversations with Mrs. Polydore?

16 A. That Michael Conrad is a con man and  
 17 that I believe he even counterfeited a building --  
 18 building permit or something along those lines, some

19 kind of building permit which enabled him to draw  
 20 perhaps on the bank's loan prior thereto, but he  
 21 counterfeited some kind of a county document is what  
 22 I was told.

23 Q. Anything else you recall from your  
 24 conversations with Mrs. Polydore?

25 A. She was very distraught. She was

1 supposed to have this house built a long time ago.  
 2 I think that she had put up some money, I don't  
 3 recall though, and that no such house ever was  
 4 delivered.

5 THE WITNESS: And I think we also  
 6 spoke to Harris, too, didn't we?

7 MR. KOBROFF: Don't look at me.  
 8 A. All this was after, really after the  
 9 fraud.

10 Q. And you said you had conversations with  
 11 a lawyer for the Pollydore's?

12 A. Yes.

13 Q. Can you describe what you discussed  
 14 with the Pollydore's lawyer?

15 A. I think I just did.

16 Q. Oh, I was asking you what your  
 17 conversations were with Ms. Pollydore.

18 A. They were similar conversations. I  
 19 think it was the lawyer that informed me of the  
 20 counterfeiting of the county document, but I could  
 21 be wrong. I don't remember who said which.

22 Q. When was your last conversation with  
 23 Mrs. Pollydore and then when was your last  
 24 conversation with the lawyer for the Pollydore's?

25 A. I would say probably February or March

1 I'll represent to you that this is a document that  
 2 was produced in discovery by Quantum's lawyers that  
 3 bears the label GF121 in the lower right-hand  
 4 corner. Have you ever seen this document before?

5 A. Are you talking about this particular  
 6 document or the form?

7 Q. Well, let's start with the form.

8 A. Yes.

9 Q. What is the form of D-15?

10 A. It's a certificate of officers  
 11 agreement and corporate resolution.

12 Q. Is this a Quantum form?

13 A. Yes.

14 Q. And why does Quantum use a form like  
 15 this?

16 A. Because my attorney told me to.

17 Q. Now, specifically this form D-15 with  
 18 the text written in, have you ever seen that  
 19 document as filled in?

20 A. No.

21 Q. Mr. Sheinker, I'm going to show you a  
 22 document that was marked yesterday at Ms. DeSouza's  
 23 deposition as D-4 for identification. Could you  
 24 please take a look at that document and let me know  
 25 if you've ever seen it before.

Sheinker - Doherty 51

Sheinker - Doherty 53

1 of '08.

2 Q. For which one, Mrs. Pollydore or the  
 3 lawyer?

4 A. Both. Both.

5 Q. Regarding page 28 of 70 within that  
 6 exhibit D-14 in front of you, do you recall whether  
 7 you spoke with Maria DeSouza about including a  
 8 signature line for the Pollydore's to sign?

9 I'll wait till you get to that page.

10 Do you recall having a conversation  
 11 with Ms. DeSouza about putting in a signature line  
 12 for the Pollydore's to sign this document?

13 A. I don't recall.

14 Q. Do you recall having a conversation  
 15 with Ms. DeSouza about having any property owners  
 16 that were doing business with Westwood sign off on  
 17 what you call an estoppel certificate?

18 A. No.

19 MR. DOHERTY: Can you please mark  
 20 that.

21 (Exhibit D-15, one-page certificate of  
 22 officers agreement and corporate resolution dated  
 23 September 20, 2007, is marked for identification.)

24 Q. Mr. Sheinker, I'm showing you a  
 25 document that's been marked D-15 for identification.

1 A. Once again, are we talking about the  
 2 form or this particular document?

3 Q. That particular document.

4 A. If you're asking me if I've ever seen  
 5 this prior to the transaction, the answer is no.

6 Q. What transaction are you referring to?

7 A. Prior to any of these transactions.

8 The answer is no.

9 Q. On D-4 you'll notice at the bottom  
 10 there are signature lines that say Mr. Barry Postell  
 11 and Mrs. Barry Postell. Do you see that?

12 A. Yes.

13 Q. Do you have any recollection of  
 14 speaking with Ms. DeSouza and instructing her to put  
 15 signature lines in for the Postells on D-4?

16 A. I don't remember that conversation  
 17 with Ms. DeSouza.

18 Q. Since the meeting that you had with  
 19 Warfield and Conrad, did you ever speak with either  
 20 of them again?

21 A. Yes.

22 Q. How many times have you spoken with Mr.  
 23 Warfield since that meeting in your office when you  
 24 were in New York?

25 A. Maybe two.

1 Q. Can you approximate when those  
 2 conversations with Warfield took place?  
 3 A. **Right about the time that this**  
 4 **transaction paid, which was this -- I can get a date**  
 5 **of payment here. It would refresh my memory.**

6 When I say "this transaction," I mean  
 7 transaction No. 25 -- it looks like 2567. Let's  
 8 call it the Barry Postell transaction. The bank  
 9 sent the payment directly to Conrad. He had a three  
 10 hundred thousand some odd dollar check in his hand  
 11 made out to him and it was brought to my attention,  
 12 so naturally I got on the phone and I called him up.

13 Q. And you called Warfield or you called  
 14 Conrad?

15 A. Conrad.

16 Q. And did you reach Conrad?

17 A. Yes.

18 Q. Can you describe what your discussion  
 19 was with Conrad.

20 A. **I implored him to immediately turn**  
 21 **over the check to my representative in Maryland. I**  
 22 **had an attorney that I'd worked with in the past and**  
 23 **he was minutes away from their location, so in order**  
 24 **to protect the bank's position, I -- I arranged for**  
 25 **a place where he could drop that check off**

1 **immediately, alleviating the risk to the bank that**  
 2 **he would convert the money.**

3 Q. When you refer to the bank, you're  
 4 referring to National City?

5 A. Mmm-hmm.

6 Q. Who alerted you to the fact that Conrad  
 7 had a check in hand?

8 A. **I believe that Maria had either spoken**  
 9 **with him or had -- I don't remember. Somebody in my**  
 10 **office alerted me to the fact that Conrad has the**  
 11 **check.**

12 Q. And what did Conrad say in response  
 13 when you implored him to turn the check over to your  
 14 Maryland attorney?

15 A. **He complied immediately.**

16 Q. Did he say anything in the conversation  
 17 that you remember?

18 A. **No. I mean, shockingly, in**  
 19 **retrospect, I guess --**

20 MR. KOBROFF: Don't discuss it.

21 A. **He complied.**

22 Q. Can you recall any other conversations  
 23 that you had with Conrad?

24 A. **After I realized that we'd been**  
 25 **defrauded, I did have a chance to speak to him.**

1 MR. GOLDSTEIN: Did or didn't?

2 THE WITNESS: I did.

3 Q. So that would have been in January of  
 4 2008?

5 A. Yes.

6 Q. This was by telephone?

7 A. Yeah.

8 Q. And maybe it's not clear. The  
 9 conversation you had with Conrad about turning over  
 10 the check, was that by telephone as well?

11 A. Yes.

12 Q. What did you speak to Conrad about in  
 13 January?

14 A. **I told him that I learned that the --**  
 15 **I learned from Penn Lyon that the Pollydore invoice**  
 16 **was fictitious and if that's correct that would**  
 17 **represent a serious fraud upon our company, upon the**  
 18 **bank, and that there could be some dire consequences**  
 19 **if it's true.**

20 Q. And what did Conrad say to you?

21 A. **He dismissed it as being untrue.**

22 Q. Did he have any explanation?

23 A. No.

24 Q. Do you recall anything else about the  
 25 conversation with Conrad?

1 **immediately, alleviating the risk to the bank that**  
 2 **he would convert the money.**

3 Q. When you refer to the bank, you're  
 4 referring to National City?

5 A. Mmm-hmm.

6 Q. Who alerted you to the fact that Conrad  
 7 had a check in hand?

8 A. **I believe that Maria had either spoken**  
 9 **with him or had -- I don't remember. Somebody in my**  
 10 **office alerted me to the fact that Conrad has the**  
 11 **check.**

12 Q. And what did Conrad say in response  
 13 when you implored him to turn the check over to your  
 14 Maryland attorney?

15 A. **He complied immediately.**

16 Q. Did he say anything in the conversation  
 17 that you remember?

18 A. **No. I mean, shockingly, in**  
 19 **retrospect, I guess --**

20 MR. KOBROFF: Don't discuss it.

21 A. **He complied.**

22 Q. Can you recall any other conversations  
 23 that you had with Conrad?

24 A. **After I realized that we'd been**  
 25 **defrauded, I did have a chance to speak to him.**

1 A. **I think that was about my last**  
 2 **conversation with Conrad. No, I don't recall**  
 3 **anything else.**

4 Q. Did he say anything about getting back  
 5 to you to explain?

6 A. Perhaps.

7 Q. I believe you mentioned that you  
 8 learned from Penn Lyon that there was a fictitious  
 9 invoice?

10 A. Correct.

11 Q. When did that conversation with Penn  
 12 Lyon take place, and who did you speak to at Penn  
 13 Lyon?

14 A. **I spoke to David Reed, if that's his**  
 15 **name, David Reed. And according to my affidavit it**  
 16 **says that I spoke to him on or about January 11,**  
 17 **which sounds approximately correct; 2008, that is.**

18 Q. What caused you to speak to Mr. Reed of  
 19 Penn Lyon?

20 A. Well, when we found out that Mrs.  
 21 Pollydore said that there is no house, given the  
 22 fact that we had sent money to Penn Lyon, we were  
 23 trying to find out how this could be.

24 Q. Your conversation with Mrs. Pollydore,  
 25 the first one where you learned that the house had

1 never been delivered, what prompted that  
2 conversation?

3 A. Somehow, and I don't recall, somebody  
4 in my office told me that, if I recall, that they  
5 had a conversation with -- if I recall, Michael  
6 Conrad was rarely calling us back suddenly. There  
7 may have been some kind of a collection call, maybe  
8 by Wilmer Russell, which might have tipped somebody  
9 in my office off to the fact that there may have  
10 been a fraud possibility and so -- but honestly I  
11 don't recall, but there was something that -- that  
12 made us concerned and suspicious, so our due  
13 diligence led us to call the Polydore.

14 Q. And from there you called Mr. Reed at  
15 Penn Lyon?

16 A. Mmm-hmm. Yes.

17 Q. Can you please describe for me what you  
18 recall of your conversation with Mr. Reed of Penn  
19 Lyon.

20 A. He knew of Conrad, he knew of Westwood  
21 Design/Build, and I explained to him that the money  
22 we had sent him for the Polydore residence -- he  
23 told me that there was no such thing as a Polydore  
24 residence and that -- I said, Then are you telling  
25 me I'm looking at a bogus invoice? And he says --

1 if I recall, he said, Well, fax it to me. And I  
2 faxed it to him. And, indeed, I think he got back  
3 to me that day, that evening, and said that it's  
4 fictitious.

5 Q. What made you reach out to Penn Lyon to  
6 find out the status of a house for the Polydore?  
7 What was --

8 A. I was calling anybody or anything  
9 relating at that point to the transaction just to  
10 try and get more information.

11 Q. And what was Penn Lyon's role in the  
12 transaction?

13 A. Penn Lyon is the -- well, we now know  
14 it to be the non-supplier of the Polydore house,  
15 but they were represented to us as being the  
16 supplier of the Polydore house and the person who  
17 was going to be responsible for erecting the  
18 Polydore house; person, company.

19 Q. And was any payment made to Penn Lyon  
20 by Quantum?

21 A. Yes.

22 Q. Can you describe what the circumstances  
23 were that led up to that payment and how much the  
24 payment was?

25 MR. KOBROFF: Objection to form.

1 You can answer if you can.

2 A. After the second transaction wherein  
3 the check went to Michael Conrad and he turned it  
4 over to us, I just had the idea that the next  
5 go-round on the next advance, it would be advisable  
6 to send the money, the portion of the money relating  
7 to the Polydore transaction, to Penn Lyon directly.  
8 So he wasn't happy about it. Conrad wasn't happy  
9 about that, but I insisted and I asked him to see a  
10 copy of the invoice from Penn Lyon so that we could  
11 make our payment directly. He provided a copy, and  
12 we wired the money directly to Penn Lyon.

13 Q. If I can ask, are you looking for a  
14 copy of the Penn Lyon invoice?

15 A. Yes.

16 Q. And you're still -- now you're looking  
17 at D-14, just so the record is clear.

18 A. Yeah.

19 MR. KOBROFF: It's 37.

20 Q. Mr. Sheinker, have you found a copy of  
21 the Penn Lyon invoice that you're referring to in  
22 your testimony?

23 A. Yes.

24 Q. Am I correct that it's page -- it's  
25 within D-14, page 37 of 70 according to the

1 numbering up at the top right-hand corner?

2 A. Yes.

3 Q. And it's your understanding this  
4 invoice was a document provided to Quantum by  
5 Westwood?

6 A. It's my understanding that this was  
7 provided to us by Penn Lyon through Westwood.

8 Q. And is this the invoice that you recall  
9 faxing to Mr. Reed at Penn Lyon to verify whether it  
10 was a real invoice?

11 A. I believe so.

12 Q. And did you hear back from Mr. Reed  
13 regarding whether it was a real invoice?

14 A. Yes.

15 Q. Was it the same day of your first  
16 conversation with him?

17 A. I believe so.

18 Q. And what did Mr. Reed tell you?

19 A. He said the invoice was fictitious.

20 Q. Do you remember anything else about  
21 that call with Mr. Reed?

22 A. I think I told him to please send us  
23 back the money.

24 Q. And what was Mr. Reed's response?

25 A. I think that -- I think that my

Sheinker - Doherty 62

1 request may have been in writing to send back the  
 2 money. I don't think I told him verbally to send  
 3 back the money. I think the request was in writing.  
 4 Q. If you turn to the last page within  
 5 that Exhibit D-14 in front of you, does looking at  
 6 that last page, which, for the record, is numbered  
 7 41 of 70 in the upper right-hand corner, does that  
 8 refresh your recollection of having further  
 9 communication with Mr. Reed of Penn Lyon?  
 10 A. Yes.  
 11 Q. What is this document that's on the  
 12 last page of D-14?  
 13 A. What is this document? This is my  
 14 e-mail to David Reed.  
 15 Q. Did you receive a response from Mr.  
 16 Reed to this e-mail?  
 17 A. I believe that my attorney might have  
 18 received -- my attorney Charles Shea (phonetic) may  
 19 have received a response either from their lawyer --  
 20 I think from their lawyer. But there was some money  
 21 that we would be pleasantly surprised, I think is  
 22 what they would -- we were told. I think my  
 23 attorney was told that we would be pleasantly  
 24 surprised with respect to some amount of money that  
 25 was available for us, and I believe that there was

Sheinker - Doherty 64

1 A. Yes.  
 2 Q. I'm going to show you a document that  
 3 was marked at yesterday's deposition as D-13 for  
 4 identification. Could you please look at that.  
 5 Do you recognize those pages?  
 6 A. Yes.  
 7 Q. What are those pages?  
 8 A. A series of e-mails between my office  
 9 and Mr. Justice.  
 10 Q. Did you ever receive a response from  
 11 Mr. Justice to the last one that looks like you sent  
 12 him on January 17 at 2:52 p.m.?  
 13 A. I don't believe so.  
 14 Q. After sending that e-mail on January 17  
 15 in the afternoon, did you have any phone  
 16 conversations with Mr. Justice or anyone at National  
 17 City?  
 18 A. I don't recall.  
 19 Q. I see that your January 17 e-mail was  
 20 sent to Timothy Justice, Joe Cartellone, and Larry  
 21 Spangler. Who are those last two individuals that  
 22 you sent your e-mail to?  
 23 A. My recollection is that they were  
 24 high-level senior executives at the bank that I got  
 25 from the bank's Web site.

Sheinker - Doherty 63

1 also a subsequent written conversation which was  
 2 disappointing when it finally came in. So we were  
 3 never pleasantly surprised.  
 4 Q. Can you estimate how many transactions  
 5 a year Quantum engages in?  
 6 A. I think it's about --  
 7 MR. KOBROFF: We're talking about  
 8 factoring transactions?  
 9 A. 25 to 50 a week.  
 10 Q. Are you referring to 25 to 50 factoring  
 11 agreements a week?  
 12 A. You're talking about factoring  
 13 transactions, yeah.  
 14 Q. Right, purchasing accounts receivable?  
 15 A. Yeah.  
 16 Q. Out of those 25 to 50 a week, can you  
 17 estimate what percentage turn out to have been  
 18 fraudulent or have fraud involved in them?  
 19 A. You lose one half -- we usually  
 20 typically lose one half of one percent of invoices  
 21 purchased per year.  
 22 Q. I believe earlier you indicated that  
 23 you had some e-mail communications with someone at  
 24 National City when you determined that the situation  
 25 with Westwood was fraudulent. Is that correct?

Sheinker - Doherty 65

1 Q. Did either one of those individuals  
 2 respond to your e-mail?  
 3 A. Not that I can recall.  
 4 Q. To your knowledge, did anyone at  
 5 Quantum explain to National City Mortgage that it  
 6 would be guaranteeing payment to Quantum even if  
 7 Westwood never delivered a house to the Polydorees?  
 8 MR. KOBROFF: Objection to form.  
 9 MR. GOLDSTEIN: I join in the  
 10 objection.  
 11 A. I think that that estoppel speaks for  
 12 itself.  
 13 Q. Besides your position as to what the  
 14 estoppel says, and I assume you're referring to the  
 15 page that was within D-14?  
 16 A. Yes.  
 17 Q. Besides that estoppel certificate, as  
 18 you refer to it, to your knowledge, did anyone from  
 19 Quantum explain either by telephone or separate  
 20 writing that National City would be guaranteeing  
 21 payment to Quantum even if Westwood never delivered  
 22 a house to the Polydorees?  
 23 A. You mean in addition to what's set  
 24 forth on the estoppel?  
 25 Q. Yes.

|  |  |
|--|--|
| <p>Sheinker - Doherty 66</p> <p>1        A.    In that regard?</p> <p>2        Q.    Yes, in addition to your interpretation<br/>3 of the estoppel.</p> <p>4        A.    I wouldn't have personal knowledge of<br/>5 that.</p> <p>6        Q.    Has anyone at Quantum told you that<br/>7 they provided such an explanation to National City?</p> <p>8        A.    No.</p> <p>9        Q.    Did National City receive any benefit<br/>10 as a result of Mr. Washburn signing what you call<br/>11 the estoppel?</p> <p>12            MR. KOBROFF: Objection to form.</p> <p>13        A.    Yes.</p> <p>14        Q.    What benefit do you believe National<br/>15 City received from Quantum for Mr. Washburn signing<br/>16 what you call the estoppel?</p> <p>17            MR. KOBROFF: Do you want the question<br/>18 read back?</p> <p>19        A.    In retrospect nobody received the<br/>20 benefit, not myself, not the bank, but at the time<br/>21 of the transaction, No. 2, for example, there was a<br/>22 benefit to the bank, there was a benefit to<br/>23 Westwood, and a benefit to the homeowner.</p> <p>24            The third transaction turned out to be<br/>25 fraudulent, unbeknownst to Quantum.</p>   | <p>Sheinker - Doherty 68</p> <p>1 which is a different story. So if the bank was<br/>2 truly obligated to make the payment, then the<br/>3 benefit to the bank was that they didn't have to<br/>4 make the payment then, I made the payment then.</p> <p>5 There is consideration, therefore.</p> <p>6        Q.    In connection with I think you<br/>7 described it as the second deal or the second<br/>8 contract, are you referring to Postell?</p> <p>9        A.    Correct.</p> <p>10       Q.    What benefit do you contend that<br/>11 National City received in connection with signing<br/>12 what you call the estoppel for the Postell project?</p> <p>13            MR. KOBROFF: Asked and answered.</p> <p>14        A.    The benefit there is that, once again,<br/>15 instead of the bank having to reach into their<br/>16 pocket to make a current payment to their customers'<br/>17 developer, that we were anticipating that payment so<br/>18 as to enable the rapid construction, which benefits<br/>19 the bank's customer and enables the bank to put on<br/>20 more business, collect more interest, and I assume<br/>21 enables them to do more business.</p> <p>22        Q.    Do you know how much time passed from<br/>23 when Westwood advanced money to -- when Quantum<br/>24 advanced money to Westwood on the Postell project<br/>25 and when a check was released from National City to</p> |
| <p>Sheinker - Doherty 67</p> <p>1        Q.    When you say the third transaction, is<br/>2 that the Pollydore transaction?</p> <p>3        A.    The Pollydore transaction.</p> <p>4        Q.    What benefit, if any, do you believe<br/>5 National City received as a result of what you call<br/>6 the estoppel letter in connection with the Pollydore<br/>7 project?</p> <p>8        A.    Well, rather than the bank having<br/>9 advanced money for a vacant, uncleared piece of land<br/>10 to the tune of two hundred and some odd thousand<br/>11 dollars, the bank induced Quantum to advance such<br/>12 funds, so the bank received a benefit to the tune of<br/>13 two hundred and some odd thousand dollars. Rather<br/>14 than using their own money, they got us to put our<br/>15 money out.</p> <p>16        Q.    What leads you to believe that National<br/>17 City would otherwise have advanced \$240,000 to<br/>18 Westwood for vacant property for the Pollydores?</p> <p>19        A.    Well, unless the bank was in a<br/>20 conspiracy to defraud me, my company, the bank was<br/>21 telling us that the money was due and owing, so the<br/>22 bank could have written that check themselves, but<br/>23 rather they'd have Quantum write the check debts and<br/>24 we did that, so therefore the bank was obligated to<br/>25 make the payment, unless the bank was lying to me,</p> | <p>Sheinker - Doherty 69</p> <p>1 Westwood on Postell?</p> <p>2        A.    Not off the top of my head.</p> <p>3        Q.    Do you think it was more than a week<br/>4 that passed?</p> <p>5        A.    Yes.</p> <p>6        Q.    Do you think it was more than two<br/>7 weeks?</p> <p>8        A.    I don't know.</p> <p>9            MR. DOHERTY: Off the record.<br/>(Recess taken.)</p> <p>10          MR. DOHERTY: I'm going to let Scott<br/>11 continue.</p> <p>12          MR. GOLDSTEIN: My name is Scott<br/>13 Goldstein --</p> <p>14          THE WITNESS: If you don't mind, can I<br/>15 just add to my last answer?</p> <p>16          MR. KOBROFF: What was the last<br/>17 question?</p> <p>18          THE WITNESS: The last question was<br/>19 about what benefit there was to the bank.</p> <p>20          MR. DOHERTY: Okay.</p> <p>21          THE WITNESS: I also recall that the<br/>22 bank really wanted to do a lot of business with<br/>23 Michael Conrad's company. I don't recall for sure,<br/>24 but I think given that he was a minority they wanted</p>   |

Sheinker - Doherty

70

1 to increase business with the local minority  
 2 businesses and they wanted him to succeed, so this  
 3 was another reason why he was able to get done these  
 4 transactions with the bank. They were motivated to  
 5 do a lot of business, that this was in their minds  
 6 going to result in a large quantity of business for  
 7 the bank to be able to do a lot more of those  
 8 mortgages and these modular homes. This was  
 9 something that they were looking forward to doing on  
 10 a more regular basis, and this, our financing,  
 11 helped bridge this gap, which was the fact that the  
 12 boxes get delivered and he's due money but that he  
 13 then has to pay Penn Lyon in order to get more  
 14 credit or to get the buildings erected. In this  
 15 particular case he needed the money, or we were  
 16 under the impression he needed the money, to get the  
 17 erection of the Pollydore house. So now it's either  
 18 I reach into my pocket or the bank reaches into his  
 19 pocket or he reaches into his pocket. He didn't  
 20 have the money, the bank didn't want to reach into  
 21 their pocket, so in comes Quantum Corporate Funding  
 22 and I solve everybody's problem. That is the  
 23 benefit to Westwood and the bank.

## 24 FURTHER EXAMINATION BY MR. DOHERTY:

25 Q. What's the source of your claimed

Sheinker - Doherty

71

1 knowledge about National City wanting to do more  
 2 business with Mr. Conrad because of his race?  
 3 A. I didn't say it was because of his  
 4 race. I said because he was -- they wanted to do  
 5 more business with the minority -- local minority  
 6 business community. Local minority. I didn't say  
 7 just minority; I said local minority business  
 8 community.

9 Q. What's the source of your knowledge  
 10 that National City wanted to do more business with  
 11 the local minority business community?

12 A. He told me that he had a good  
 13 relationship with the people over there and that  
 14 this was the basis for that, that they were trying  
 15 to establish more business with the local  
 16 minority -- local and minority owned businesses,  
 17 contractor relationships.

18 Q. No one at National City told you that  
 19 was --

20 A. No, nobody at --

21 Q. -- something they desired?

22 A. Correct.

23 Q. Before the transactions with Westwood,  
 24 are you aware of Quantum having any other dealings  
 25 where National City Mortgage was involved?

Sheinker - Doherty

72

1 A. Quantum and National City Mortgage?

2 Q. Correct, prior to the Westwood

3 situation that you've been testifying to today.

4 A. Prior to Westwood, any other  
 5 transactions --

6 Q. Right.

7 A. No, I don't recall any.

8 Q. Since the Westwood transaction that you  
 9 were testifying about involving the Pollydores and  
 10 Postells, has Quantum done any deals where National  
 11 City is involved?

12 A. Not to my knowledge.

13 Q. If Westwood never furnished the work  
 14 and materials to the Pollydores, is it your  
 15 understanding that Westwood would still be due the  
 16 amount of the invoice?17 A. Absolutely. As far as I was concerned  
 18 the materials were delivered, so I was therefore  
 19 advancing money for work services performed. So if,  
 20 in fact, there were no materials that had ever been  
 21 delivered, then I was fraudulently induced or -- and  
 22 that's how I would believe the bank would certainly  
 23 be responsible to us.

24 Q. Move to strike as nonresponsive.

25 What I was asking you is, if Westwood

Sheinker - Doherty

73

1 didn't furnish the work and materials to the  
 2 Pollydores, is it your understanding that Westwood  
 3 would still be entitled to the 347,000 that's on the  
 4 invoice?

5 MR. KOBROFF: Objection to form.  
 6 If you understand it, try to answer.

7 A. No.

8 Q. "No" meaning Westwood would not be  
 9 entitled to that money?

10 A. If Westwood never performed, Westwood  
 11 would not be entitled. My entitlement is due to the  
 12 estoppel certificate, which was signed off, which  
 13 induced us to advance funds to Westwood.

14 Q. And are you aware of any conversations  
 15 that were had with Quantum's employees with National  
 16 City that would have given National City a different  
 17 understanding as to the meaning of what you call the  
 18 estoppel certificate?

19 A. I think the estoppel, the plain  
 20 wording of the estoppel speaks for itself, the  
 21 estoppel certificate.

22 Q. Move to strike.

23 What I was asking you is, are you aware  
 24 of conversations between Quantum employees and  
 25 National City that would have given National City a

1 different understanding than what you claim the  
2 estoppel certificate means?

3 MR. KOBROFF: Objection to form.

4 A. The estoppel certificate says neither  
5 Quantum nor its agents made any representations  
6 except as herein set forth.

7 Q. Move to strike as nonresponsive.

8 The question --

9 MR. KOBROFF: Just because you're not  
10 getting the answer you want doesn't mean that it's  
11 not responsive.

12 MR. GOLDSTEIN: Read back the  
13 question.

14 MR. DOHERTY: Well, I disagree with  
15 you.

16 MR. KOBROFF: Yeah, read back the  
17 question. I objected to it. I'll object to it  
18 again, but the witness can answer. Let him try to  
19 answer. If not, rephrase it.

20 MR. GOLDSTEIN: Read back the question  
21 and answer, see at least in your mind if it's  
22 nonresponsive.

23 (Last question and answer are read  
24 back by the court reporter.)

25 MR. KOBROFF: You're asking him to

1 determine what somebody at National City might have  
2 understood some conversation to have meant, all  
3 right. This is an impossible kind of question for  
4 him to answer other than to say my estoppel says  
5 here's what the representations I made. You know,  
6 you take whatever you want out of them, but he's  
7 saying they're plain language to anybody who reads  
8 them. You're asking what National City might have  
9 thought, and I'm saying how can he know what  
10 National City could have thought.

11 MR. DOHERTY: Actually, I'm asking a  
12 different question, but maybe if you're not  
13 understanding it correctly I'll try to ask it a  
14 different way.

15 Q. Has anybody at Quantum, any of your  
16 employees at Quantum, told you that they had  
17 conversations with National City employees where the  
18 National City employees had a different  
19 understanding than what you say the estoppel  
20 certificate means?

21 A. Not according to the estoppel  
22 certificate, which says explicitly that nobody from  
23 Quantum has made any representations except as  
24 herein set forth, so this could be the only  
25 understanding that could have been conveyed to the

1 people over at National City. I think that's pretty  
2 clear.

3 Q. Move to strike as nonresponsive.

4 What I'm asking is -- I'm not asking  
5 what your document says. I'm asking whether any  
6 employees at Quantum have told you that they've had  
7 any conversations with National City where the  
8 National City employees had a different  
9 understanding as to what your so-called estoppel  
10 certificate means.

11 A. I think we're going in circles,  
12 because I don't see the difference. I can't  
13 understand the distinction, and I don't see the  
14 difference. The fact is that this says right here  
15 neither Quantum nor its agents made any  
16 representations except as herein set forth. That's  
17 what I understand.

18 Q. Move to strike --

19 A. That's what I understand.

20 Q. Move to strike as nonresponsive.

21 A. Okay.

22 Q. Did you have any conversations with any  
23 of your Quantum employees about their discussions  
24 with National City over the so-called estoppel  
25 certificate?

2 Q. In any of those discussions that you  
3 had with your employees, did any of your employees  
4 tell you that based on what they heard from National  
5 City employees, National City had an understanding  
6 that was different than what's in that written  
7 document?

8 MR. KOBROFF: I'm going to object. I  
9 don't understand. What do you mean? Which part of  
10 this written document did they not have an  
11 understanding of? I mean, be more specific. If  
12 you're going to be, you know, this -- you're  
13 referring to a document. The guy reads the  
14 document. You say it's not responsive. Which part  
15 of the document are you saying -- directing his  
16 attention to that they had a different understanding  
17 about?

18 MR. DOHERTY: Any part of the  
19 document.

20 MR. KOBROFF: Any part?

21 THE WITNESS: Can you read the  
22 question again.

23 MR. GOLDSTEIN: Do you mean to be  
24 referring to the Postell document or to the  
25 Polydore?

Sheinker - Doherty

78

Sheinker - Goldstein

80

1 MR. DOHERTY: I'm referring  
 2 specifically to the Pollydore one, but I believe  
 3 that the text --

4 MR. GOLDSTEIN: It's not exactly the  
 5 same. I mean, the stuff you're talking about is  
 6 probably the same, but the text of the two documents  
 7 are not exactly the same.

8 Q. If you could open D-14 to page 28 of  
 9 70, my question was, not what does this page 28 of  
 10 70 say within D-14, what I'm asking you is, did any  
 11 of your employees at Quantum tell you that based on  
 12 their talks with people at National City, that  
 13 National City had a different understanding than  
 14 what your understanding is of the estoppel  
 15 certificate?

16 A. No.

17 EXAMINATION BY MR. GOLDSTEIN:

18 Q. Again, I'm Scott Goldstein. I  
 19 represent Penn Lyon Homes. I'm going to ask you  
 20 some questions today.

21 I'm going to show you what's been  
 22 marked at Ms. DeSouza's deposition as D-11. Do you  
 23 recognize that document?

24 A. I recognize the form.

25 Q. Have you ever seen that document prior

Sheinker - Goldstein

79

Sheinker - Goldstein

81

1 to today?

2 A. I believe so.

3 Q. When did you first see that document?

4 A. After -- in compiling this lawsuit.

5 Q. Did you participate in any way in the  
 6 preparation of that document?

7 A. No.

8 Q. Do you know what this document -- what  
 9 the purpose of this document is for, marked as D-11?

10 A. It's a purchase and sale agreement.

11 Q. And what were you purchasing?

12 A. In retrospect, it was a bogus invoice.

13 Q. Move to strike as nonresponsive.

14 What did you purchase?

15 A. That's what I purchased, a bogus  
 16 invoice.

17 MR. KOBROFF: Are you saying it's a  
 18 good invoice?

19 A. A counterfeited bogus invoice.

20 Q. Which invoice was counterfeit and  
 21 bogus, because there's invoices that have been  
 22 referred to in this case. You've referred to an  
 23 invoice given to you from Penn Lyon. You've  
 24 referred to an invoice you received from National.

25 MR. KOBROFF: Do you have the original

1 Exhibit 14? Let him look at that. I mean, if we're  
 2 going to be referring to a specific exhibit, let him  
 3 look at the specific exhibit.

4 All right, now you're directing him to  
 5 somewhere else. I want him to see the original  
 6 D-14. I'm sorry, D-11.

7 MR. GOLDSTEIN: I gave him my copy.

8 MR. KOBROFF: You keep your copy. Let  
 9 him look at that, the one that's been marked.

10 Okay, fine. Ask questions.

11 BY MR. GOLDSTEIN:

12 Q. You say that you purchased a fraudulent  
 13 invoice. When you say you purchased a fraudulent  
 14 invoice, what invoice do you mean?

15 A. Right here.

16 MR. KOBROFF: The witness is referring  
 17 to page 26 of 70 of D-14.

18 Q. And could you describe what page 26 of  
 19 70 in D-14 is? What's that document?

20 A. It's a Westwood Design/Build invoice  
 21 to National City Mortgage, National City Bank,  
 22 Christopher Washburn, vice-president, for a  
 23 construction draw in the amount of \$347,000  
 24 representing completed curbside delivery of modular  
 25 pre-fabricated home.

Sheinker - Goldstein

79

Sheinker - Goldstein

81

1 Q. Before you entered into the agreement  
 2 marked as D-11 --

3 A. For Pollydore?

4 Q. For Pollydore.

5 MR. KOBROFF: Pollydore modular  
 6 delivery number -- it gives a number,

7 Q. Before you agreed to purchase what you  
 8 now call a fraudulent invoice, which is page 26 of  
 9 70 in Exhibit D-14, what steps did you take to  
 10 verify that it was a valid invoice?

11 A. Well, firstly let me -- you said that  
 12 I agreed to purchase a fraudulent invoice.

13 Q. No, you said that.

14 A. No, No, I said I purchased a  
 15 fraudulent invoice.

16 Q. No, you said -- correct. You said you  
 17 purchased a fraudulent invoice.

18 A. I didn't agree to purchase a  
 19 fraudulent invoice. I was defrauded into purchasing  
 20 a fraudulent invoice.

21 Q. And who were you defrauded by?

22 A. I was defrauded -- that's a good

23 question. Certainly I was defrauded by Westwood  
 24 Design/Build and perhaps maybe even the bank,  
 25 National City Mortgage, National City Bank. I don't

1 know.

2 Q. What steps did you take to verify that  
3 the invoice that you were purchasing in the purchase  
4 and sale agreement marked as D-11 was valid?

5 A. Me personally?

6 Q. Correct, or your company.

7 MR. KOBROFF: Objection to form.

8 Q. All right, you personally and then your  
9 company separate, two separate questions.

10 A. Well, I wasn't personally involved in  
11 the verification process.

12 Q. Are you aware of the verification  
13 process that took place with respect to this  
14 transaction?

15 A. Yes.

16 Q. Who advised you of what steps were  
17 taken to verify this transaction?

18 A. I can't recall who, but I'm looking at  
19 the signed estoppel certificate, which is  
20 representative of a verification.

21 Q. Who at your company advised you?

22 A. I can't remember who advised me that  
23 we had verified the invoice.

24 Q. Prior to the verification of the  
25 invoice, were you ever consulted about the

1 again, would use an estoppel certificate to

2 effectuate those transactions, what percentage would  
3 that be?

4 MR. KOBROFF: Objection to form.

5 A. At least 30 percent, maybe 40 percent.

6 Q. And I show you what's been marked -- it  
7 was previously marked, if you want to use the  
8 original exhibit.

9 MR. KOBROFF: Yeah, that way you keep  
10 yours.

11 Q. -- as D-9 for identification. I'm not  
12 going to give you mine. He's going to give you the  
13 original. The second page of that.

14 A. Okay.

15 Q. If you could take a look at the  
16 language in the second page of D-9 --

17 A. Mmm-hmm.

18 Q. -- in the estoppel certificates that  
19 you use in 30 to 40 percent of these similar  
20 transactions --

21 MR. KOBROFF: Objection to form.

22 Q. -- is the language similar to what's  
23 set forth in D-9?

24 A. That I can't tell you. We've got  
25 multiple different estoppels.

1 verification process with respect to the Polydore  
2 invoice?

3 A. Tangentially.

4 Q. And by tangentially, what do you mean?

5 A. I can't recall the specifics of  
6 conversations, but the general understanding was  
7 that we were to get an estoppel certificate, that my  
8 operations department were to get estoppel  
9 certificates or we wouldn't fund.

10 Q. How often do you use estoppel  
11 certificates? When I say "you" I'm referring to  
12 your company, Quantum. How often does Quantum use  
13 estoppel certificates in connection with a  
14 transaction similar to the one you did, that Quantum  
15 did, in the Polydore case?

16 MR. KOBROFF: Objection to form.

17 A. Frequently with respect to  
18 construction contractor projects.

19 Q. And I think you testified that you do  
20 25 to 50 similar type transactions per week?

21 MR. KOBROFF: Objection to form.

22 Q. Or is that incorrect?

23 A. Yeah, about -- closer to 25.

24 Q. And if you could estimate what  
25 percentage you would use -- you meaning Quantum

1 Q. How many different estoppel  
2 certificates do you use, does Quantum use?

3 A. We have quite a few.

4 Q. More than three?

5 A. Yes.

6 Q. More than five?

7 A. Yes. If you'd like, I'll explain.

8 Q. Sure.

9 A. You see this offset variable in there

10 beyond 20 percent of the invoice amounts?

11 Q. Yes.

12 A. That could be changed to 30 percent,  
13 40 percent, 50 percent, 55 percent, 60 percent, 62  
14 percent, 68 percent so you really have a tremendous  
15 amount of versions of estoppels. We also have other  
16 types of estoppels. We have negotiated estoppels.

17 We have -- you know, sometimes a particular account  
18 debtor wishes to have specific wording. We  
19 negotiate them. So there's many different estoppel  
20 types.

21 Q. And who do you usually -- who does  
22 Quantum usually obtain signatures on estoppel  
23 certificates from?

24 A. Authorized individuals.

25 Q. And authorized individuals, in your

1 experience in this business, who does that usually  
2 refer to?

3 A. It depends upon the entity.

4 Q. What type of entities are examples of  
5 this?

6 A. I don't know what you mean.

7 Q. What type of entities usually authorize  
8 these type of certificates?

9 A. What type of entities? We've got --  
10 we've been in business 18 years. All different  
11 types of entities.

12 Q. Give me a couple of them.

13 A. General contractors, retailers. You  
14 got a couple there. That's two.

15 Q. Do you present them to banks sometimes?

16 Let me rephrase. Do you ask banks to  
17 sign estoppel certificates?

18 A. I believe so.

19 Q. Do you ask mortgage lending companies  
20 to sign estoppel certificates on occasion, "you"  
21 meaning Quantum again?

22 A. I believe so, but it's been -- you  
23 know, has been awhile since that has happened, so I  
24 can't recall specifically.

25 Q. And what does Quantum use the estoppel

1 MR. KOBROFF: You're asking --

2 A. -- I would have done this without the  
3 estoppel certificate?

4 Q. Yes.

5 THE WITNESS: Am I supposed to answer  
6 hypothetical questions?

7 MR. KOBROFF: Objection to form. If  
8 you can answer.

9 A. I would not have done this  
10 transaction, in my hypothetical opinion, had I not  
11 gotten the estoppel certificate, in response to your  
12 hypothetical question.

13 Q. Was Quantum ever presented with a  
14 transaction called the Harris project by Westwood?

15 A. I'm not sure.

16 Q. Have you ever heard of a transaction  
17 called the Harris project?

18 A. Yes.

19 Q. What is your understanding of what the  
20 Harris project was?

21 A. I believe that -- well, my  
22 understanding is it was another modular project of  
23 Westwood.

24 Q. Did Westwood ever request that Quantum  
25 fund or purchase an invoice with respect to the

1 certificate for in connection with these  
2 transactions?

3 A. Which transactions?

4 Q. In connection with this transaction,  
5 the Polydore transaction?

6 A. Quantum is not at the job location and  
7 can't possibly know without going through monumental  
8 efforts to determine whether or not the work has  
9 been performed, completed, and accepted to  
10 specifications and levels of acceptance of the  
11 account debtor. So where we have concentrations, we  
12 are inclined to use an estoppel certificate.

13 Q. What does the estoppel certificate do  
14 for Quantum?

15 A. It creates a binding obligation upon  
16 the account debtor to make payment.

17 Q. In cases where Quantum is requesting  
18 that an account debtor sign an estoppel certificate,  
19 if the estoppel certificate is not signed, will  
20 Quantum typically enter into the transaction?

21 A. It depends upon the circumstances.

22 Q. Let's go with the Polydore transaction  
23 circumstances.

24 A. You want me to answer a hypothetical  
25 question as to whether or not --

1 Harris project?

2 A. I wouldn't have direct knowledge of  
3 that.

4 Q. Who would have direct knowledge of  
5 that?

6 A. Either Maria or Shelley.

7 Q. By Shelley you mean Shelley Simmonds?

8 A. Yes.

9 Q. And Maria is Maria DeSouza?

10 A. Right.

11 Q. Who has the final say at Quantum  
12 whether Quantum enters into a purchase and sale  
13 agreement?

14 MR. KOBROFF: Objection to form.

15 Q. I'll ask it a different way. Who has  
16 final approval over all transactions that Quantum  
17 enters into?

18 MR. KOBROFF: Objection to form.

19 A. I approve the wires or my  
20 brother-in-law Howard Chernin approves the wires.  
21 Transactions are generally generated by the  
22 operations staff, and provided that everything is  
23 proper the wires will go out. So we spot-check  
24 transactions. I say "we" meaning myself or Howard  
25 will spot-check the transactions before they're sent

1 out.

2 Q. So the Pollydore transaction, the  
3 purchase of the invoice in the Pollydore case, the  
4 agreement was signed by Shelley Simmonds. Is that  
5 correct?

6 A. Right.

7 Q. Did Shelley Simmonds sign the agreement  
8 without checking with you? And when I say "you" I  
9 mean you, personally.

10 A. She regularly signs purchase and sale  
11 agreements.

12 Q. My question was, does she check with  
13 you before signing the agreements to approve it or  
14 does she just sign them and then afterwards you deal  
15 with it?

16 A. She has certain leeway with respect to  
17 signing the purchase and sale agreements.

18 Q. What type of leeway?

19 A. When she has what she needs to make  
20 the transaction, she can sign the transaction.

21 Q. So you're saying that she does not need  
22 to obtain your approval before signing the  
23 transactions?

24 A. Before signing the purchase and sale  
25 agreement, no.

1 shouldn't say every transaction, but the nature of  
2 transactions based upon the risks, collateral,  
3 client, are all different, so each one is  
4 underwritten differently.

5 Q. After you've entered into a purchase  
6 and sale agreement, is there any way that you --  
7 when I say "you" again I mean Quantum -- is there  
8 any way that Quantum can get out of that agreement?

9 MR. KOBROFF: Objection to form.

10 MR. GOLDSTEIN: What was wrong with  
11 the question, just for --

12 MR. KOBROFF: You're asking for a  
13 legal conclusion? He's a lawyer? You're saying I  
14 got a contract, how can I get out of this contract?

15 MR. GOLDSTEIN: To be fair, he's  
16 offered opinions on consideration.

17 MR. KOBROFF: And I've objected to  
18 those questions as well.

19 MR. GOLDSTEIN: But I don't think  
20 that's a form objection. I think a form objection  
21 is to the actual form of the question.

22 MR. KOBROFF: To me if you ask a  
23 hypothetical question --

24 MR. GOLDSTEIN: That's a substantive  
25 trial objection, --

1 Q. How about Ms. DeSouza, does she have  
2 the same type of authority?

3 A. No.

4 Q. Who does she need to obtain approval  
5 from before finalizing a purchase and sale  
6 agreement?

7 MR. KOBROFF: Objection to form.

8 A. She doesn't finalize purchase and sale  
9 agreements.

10 Q. Does anyone else besides Shelley  
11 Simmonds finalize purchase and sale agreements?

12 A. Occasionally I'll sign the purchase  
13 and sale agreement.

14 Q. Anyone else besides you and Shelley  
15 Simmonds?

16 A. I suppose occasionally Howard Chernin  
17 will sign a purchase and sale agreement.

18 Q. Anyone else?

19 A. No.

20 Q. Does Quantum have any written  
21 procedures for verifying invoices before entering  
22 into a purchase and sale agreement.

23 A. No.

24 Q. Is there an oral procedure?

25 A. No, because every transaction -- I

1 MR. KOBROFF: -- that's a form  
2 objection. If you ask a person --

3 MR. GOLDSTEIN: -- which is not  
4 permissible in a deposition.

5 MR. KOBROFF: If you ask a person who  
6 is not a legal authority of any kind, you know, a  
7 question like how do I get out of a contract --

8 MR. GOLDSTEIN: Well, let's repeat the  
9 question.

10 (Last question is read back by the  
11 court reporter as follows:

12 After you've entered into a purchase  
13 and sale agreement, is there any way that you --  
14 when I say "you" again I mean Quantum -- is there  
15 any way that Quantum can get out of that agreement?)

16 A. I don't know what entered into a  
17 purchase and sale agreement means.

18 MR. KOBROFF: Objection to form.

19 A. Executed? Delivered? What are you  
20 talking about?

21 Q. Executed a purchase and sale agreement  
22 signed by both parties.

23 A. Executed and delivered?

24 Q. Signed by both parties.

25 A. And delivered?

1 Q. And delivered, sure.

2 MR. KOBROFF: Objection to form.

3 A. Executed, delivered, and consideration  
4 paid, can we get out of the transaction?

5 Q. Yes.

6 A. No. Except, of course, if it is a  
7 fraudulent transaction and then we could, I believe,  
8 I'd have to ask my attorney this, but I believe that  
9 the transaction is voidable where it's counterfeit  
10 or a bogus invoice, such as in this case.

11 Q. Okay.

12 A. Well, that is a legal conclusion that  
13 I'm not really qualified to answer.

14 Q. But you are in the business of asset  
15 purchase, correct?

16 A. But I'm not an attorney.

17 Q. But this is your business, is it not?

18 A. This is my business, yeah.

19 Q. And you know how to conduct your  
20 business, correct?

21 A. I hope so.

22 Q. So once you became aware that you --  
23 that the invoice was fraudulent, did you try to  
24 contact Westwood?

25 A. Yes. I believe I've already stated

1 you see, and it has legal consequences.

2 MR. GOLDSTEIN: If he doesn't  
3 understand it then he can say, "I don't understand."

4 MR. KOBROFF: Right.

5 A. I told him I was going to exercise all  
6 my legal remedies is what I told him.

7 Q. My question is, did you ever tell  
8 Westwood, "I'm canceling this contract"?

9 MR. KOBROFF: Those words.

10 A. No, I --

11 MR. GOLDSTEIN: Or words similar  
12 thereof.

13 A. I told him I was going to exercise all  
14 legal remedies.

15 Q. Do you know mate what it means to  
16 cancel a contract?

17 MR. KOBROFF: Objection to form.

18 A. Why don't you tell me what it means.

19 Q. I'm not the deponent here. You're the  
20 deponent here.

21 MR. KOBROFF: So rephrase the  
22 question. The witness doesn't understand what  
23 "cancel contract" means.

24 Q. That is my question. Do you  
25 understands what it means to cancel a contract?

1 that.

2 Q. Correct.

3 MR. KOBROFF: He's entitled to ask his  
4 own questions.

5 Q. I can ask all the same questions if I  
6 want to.

7 MR. KOBROFF: He's going to share in  
8 the cost of the transcript, so he gets to ask all  
9 the questions he wants.

10 Q. Did you ask Westwood or did you advise  
11 Westwood that you were going to void the contract?

12 MR. KOBROFF: Objection to form.

13 A. No.

14 MR. GOLDSTEIN: And I'm going to ask  
15 you to state the basis of your objection beyond  
16 form. If you're going to say it's a legal  
17 conclusion, I just want you to make that statement  
18 for the record.

19 MR. KOBROFF: Void in the context  
20 you're using it is a legal term and you're asking  
21 this witness for a legal conclusion. I don't think  
22 the witness ever used the word void.

23 MR. GOLDSTEIN: He used the word  
24 voidable.

25 MR. KOBROFF: That's a different word,

1 A. In a legal -- you're talking about a  
2 legal definition.

3 Q. What does it mean to you?

4 A. What does it mean to me to cancel a  
5 contract?

6 Q. Yes.

7 A. To cancel the contract, that's what it  
8 means.

9 Q. And what does that mean? Does that  
10 mean that you can still collect on the contract?

11 Does it mean that the contract is over and you get  
12 your money back? What does it mean to you?

13 MR. KOBROFF: Objection to form.

14 Q. And I ask this question as a layman.

15 What does it mean to you as a layman?

16 MR. KOBROFF: Objection to form.

17 A. Why is that relevant here?

18 Q. Again, I'm not the deponent. There's a  
19 question pending. I need an answer.

20 MR. KOBROFF: If you can answer it,  
21 answer it. If you can't, say you can't. If you  
22 can't understand it, ask --

23 A. I'll tell you what, let me go to the  
24 bathroom and then I'll --

25 Q. No, you can't.

Sheinker - Goldstein

98

Sheinker - Goldstein

100

1 MR. KOBROFF: You can't go to the  
2 bathroom while a question is pending.

3 THE WITNESS: I've gotta go to the  
4 bathroom.

5 MR. KOBROFF: You can't go while the  
6 question is pending. You've gotta answer it or do  
7 something. You can't go to the bathroom.

8 THE WITNESS: What is the question  
9 again?

10 MR. KOBROFF: Read it back.

11 (Last two questions are read back by  
12 the court reporter.)

13 MR. KOBROFF: Objection to form.

14 MR. DOHERTY: You object to the  
15 read-back?

16 MR. KOBROFF: Oh, I didn't realize I  
17 already objected.

18 A. **What does it mean to me to cancel a  
19 contract?**

20 Q. Mmm-hmm.

21 A. **Are you talking about a unilateral  
22 cancellation?**

23 Q. No, I'm --

24 A. **Or a bilateral cancellation?**

25 Q. I'm asking the question that I asked.

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99

Sheinker - Goldstein

101

1 MR. KOBROFF: Do you understand the  
2 question?

3 THE WITNESS: I don't understand the  
4 question.

5 MR. KOBROFF: The witness doesn't  
6 understand it. Rephrase it.

7 Walt. Go to the bathroom.

8 (Recess taken.)

9 MR. KOBROFF: I want to put something  
10 on the record. I believe what's confusing the  
11 witness here is that you're asking him -- he's not  
12 sure I believe if you're talking about the specific  
13 transaction with the Polydore or you're talking in  
14 general about contracts.

15 MR. GOLDSTEIN: Fair enough. I'll  
16 talk about the specific instance with the  
17 Polydore.

18 A. **What's the question?**

19 MR. GOLDSTEIN: Could you read back  
20 the question.

21 (Record read.)

22 MR. KOBROFF: Why don't you just  
23 rephrase, ask a question. Say you're asking about  
24 Polydore. Let's be specific. Or you're not.

25 Q. Did you ever advise Westwood that you

1 wanted to cancel the Polydore contract when you  
2 learned that it was -- that the invoice was  
3 fraudulent?

4 A. **I told Westwood he better give me my  
5 money back.**

6 Q. Move to strike as nonresponsive.

7 Did you ever tell Westwood that you  
8 wanted to cancel the contract?

9 A. **I didn't use those words. I told him  
10 to give me my money back.**

11 Q. Did you ever notify Westwood in writing  
12 that you wanted to cancel the contract or something  
13 similar to canceling the contract, end the contract?

14 A. **I believe we sent him a demand letter  
15 prior to the initiation of this lawsuit.**

16 Q. And has this demand letter been  
17 produced in discovery in this action?

18 A. **I don't know. I don't know whether we  
19 did or didn't provide a demand letter.**

20 Q. Who sent the demand letter, if there  
21 was one?

22 A. **It would have been my attorney.**

23 Q. And in the context of the Polydore  
24 action, if you were to cancel the contract -- do you  
25 believe that you have the right to cancel the

Sheinker - Goldstein

101

1 contract?

2 MR. KOBROFF: Objection to form.

3 Q. Based on the fraudulent invoice.

4 A. **I have a right to get my money back.**

5 Q. From who?

6 MR. KOBROFF: Objection to form.

7 A. **From you, Penn Lyon.**

8 Q. From Penn Lyon?

9 A. **And from all the parties here,**

10 **actually.**

11 Q. Do you have a right to also collect on  
12 the invoice?

13 MR. KOBROFF: Objection to form.

14 Q. In your opinion as a layman.

15 A. **You mean collect twice?**

16 Q. Yes.

17 A. **No.**

18 Q. If you're able to collect on the  
19 invoice, was the invoice fraudulent?

20 MR. KOBROFF: Objection to form.

21 A. **Yes.**

22 Q. How so?

23 A. **The invoice was fraudulent. Now, I**

24 **have an independent contractual estoppel certificate**

25 **that I relied upon and have a separate cause of**

1 action against the bank, so I still am allowed to  
 2 collect from the bank even though the invoice was  
 3 fraudulent pursuant to an independent agreement with  
 4 the bank.

5 Q. Was that responsive to my -- move to  
 6 strike as nonresponsive, the last statement. I  
 7 don't know if it was responsive to the last  
 8 question.

9 MR. DOHERTY: I'll join in that motion  
 10 to strike.

11 MR. KOBROFF: I would have expected  
 12 you to make it, not him, assuming it was  
 13 nonresponsive.

14 Q. If the invoice is fraudulent, do you  
 15 still own the invoice?

16 MR. KOBROFF: Objection to form.

17 Q. I'll rephrase.

18 A. This is a legal conclusion that I have  
 19 no way of answering.

20 MR. KOBROFF: It's also speculative.

21 Q. I'll withdraw the question and  
 22 rephrase.

23 I'm going to skip that question.

24 You previously testified that you

25 insisted that in connection with the Pollydore

1 MR. KOBROFF: Yes, you left out

2 "defendant."

3 MR. GOLDSTEIN: I said "defendant  
 4 Westwood."

5 MR. KOBROFF: No, you didn't, but go  
 6 on.

7 Q. Paid defendant Westwood \$242,900 for  
 8 the invoice pursuant to Westwood's, by defendant  
 9 Warfield's, specific instructions, by wiring: (a)  
 10 \$130,731.72 to Westwood and; (b) wiring \$112,168.28  
 11 to defendant Penn, in payment of Penn's invoice No.  
 12 850 representing the balance outstanding on its  
 13 shipment of the 'Pollydore residence,' in quotes  
 14 Pollydore residence.

15 The portion of that that says that you  
 16 paid it pursuant to defendant Warfield's specific  
 17 instructions, is that not accurate?

18 A. It's completely accurate. We told him  
 19 that we insist that the money go to Penn Lyon, and  
 20 he provided us with the appropriate instructions.

21 Q. So whose instructions was payment made  
 22 on? Was it on Penn Lyon's instructions or was it --  
 23 I mean on Quantum's instructions?

24 A. He instructed us --

25 Q. May I finish the question, sir.

1 project you insisted that money be sent directly to  
 2 Penn Lyon. Was that your testimony?

3 A. Yes.

4 Q. It was not -- is it also fair to say  
 5 that it was not at Westwood's direction?

6 A. That's correct.

7 Q. I show you what's been marked as D-14,  
 8 which is your affidavit in support of summary  
 9 judgment. I direct your attention to Paragraph 11.  
 10 In Paragraph 11 it states that pursuant to the  
 11 agreement Quantum paid defendant Westwood \$242,900.

12 MR. KOBROFF: On December 21. If  
 13 you're going to read it, read the whole thing.

14 MR. GOLDSTEIN: Did I not say --

15 MR. KOBROFF: Yes.

16 MR. GOLDSTEIN: Then I misspoke.

17 MR. KOBROFF: You left out --

18 MR. GOLDSTEIN: It was totally  
 19 unintentional. Sorry.

20 MR. KOBROFF: All right, go on.

21 Q. Pursuant to the agreement on December  
 22 21, 2007, Quantum paid Westwood \$242,000" --

23 MR. KOBROFF: Objection. You left out  
 24 another word.

25 MR. GOLDSTEIN: I did?

1 A. Okay.

2 Q. Was it Quantum's instructions or was it  
 3 Warfield's instructions that the money was paid to  
 4 Penn Lyon?

5 MR. KOBROFF: Objection to form.

6 You're mis -- fine.

7 If you can answer it answer it, but  
 8 that's not your first question. It's not what  
 9 you're saying, but, all right, go on.

10 MR. GOLDSTEIN: I want to know whose  
 11 instructions it was.

12 MR. KOBROFF: Are you talking about  
 13 wiring instructions or payment instructions?

14 A. How to pay.

15 Q. It says "paid." What do you mean by  
 16 paid Westwood?

17 MR. KOBROFF: If you understand it,  
 18 answer it as best you can.

19 A. What was the question? I don't  
 20 understand the question.

21 (Last three questions read back.)

22 A. It was Quantum's instructions that  
 23 Penn Lyon had to get paid, but we needed their  
 24 instruction as to how to pay Penn Lyon. Paragraph  
 25 11 is referring to the instructions of how to pay

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| <p>Sheinker - Goldstein 106</p> <p><b>1 Penn Lyon.</b></p> <p>2 Q. Why did you need Warfield's<br/>3 instructions, meaning Quantum, to pay Penn Lyon?</p> <p>4 A. <b>How to pay Penn Lyon?</b></p> <p>5 Q. Does it say how to pay Penn Lyon in<br/>6 Paragraph 11 of the affidavit?</p> <p>7 A. <b>It says specific instructions. To me<br/>8 specific instructions is the detail of how to make<br/>9 the payment.</b></p> <p>10 Q. But does that say that in the<br/>11 affidavit?</p> <p>12 A. <b>That's what I meant.</b></p> <p>13 Q. I'm asking a specific question.</p> <p>14 MR. KOBROFF: And I'm saying this is<br/>15 argumentative. The document will speak for --</p> <p>16 MR. GOLDSTEIN: That's not a proper<br/>17 objection.</p> <p>18 MR. KOBROFF: It is certainly, too, a<br/>19 proper objection.</p> <p>20 MR. GOLDSTEIN: Maybe at trial it is.</p> <p>21 MR. KOBROFF: No, it's an objection to<br/>22 form.</p> <p>23 MR. GOLDSTEIN: Since when?</p> <p>24 MR. KOBROFF: It's argumentative.<br/>25 Since I just say so. If you really</p>  | <p>Sheinker - Goldstein 108</p> <p>1 the affidavit?</p> <p>2 Answer: That's what I meant.)</p> <p>3 MR. GOLDSTEIN: Move to strike as</p> <p>4 nonresponsive.</p> <p>5 Q. The question was, does it say in<br/>6 Paragraph 11 that the instruction -- that Westwood's<br/>7 instructions was how to pay Penn Lyon?</p> <p>8 A. Yes.</p> <p>9 Q. Where?</p> <p>10 A. The next phrase says by wiring<br/>11 \$130,000 to Westwood and, B, wiring 112,000 to<br/>12 defendant Penn Lyon.</p> <p>13 MR. GOLDSTEIN: Move to strike as</p> <p>14 nonresponsive.</p> <p>15 MR. KOBROFF: I would also add that<br/>16 the rest of Paragraph 11, which has not been read,<br/>17 says, "A copy of Westwood's wiring instructions to<br/>18 Quantum is annexed hereto as Exhibit F."</p> <p>19 MR. GOLDSTEIN: Could you pull out<br/>20 Penn Lyon 1 from the originals.</p> <p>21 Q. I show you what's been marked as Penn<br/>22 Lyon Exhibit 1. Have you ever seen this document<br/>23 before?</p> <p>24 A. No, not that I can recall.</p> <p>25 Q. Never at all?</p>   |
| <p>Sheinker - Goldstein 107</p> <p>1 want me to go get a brief on it, I'll put a brief in<br/>2 on it and you can put one in, but I say<br/>3 argumentative is objectionable to form.</p> <p>4 I'm not directing the witness not to<br/>5 answer, but that's what you're doing here. The<br/>6 document speaks for itself. Ask the witness a<br/>7 question.</p> <p>8 MR. GOLDSTEIN: If you're not<br/>9 instructing him not to answer, then make the record.</p> <p>10 MR. KOBROFF: Okay. I've made my<br/>11 record. I've objected to form, argumentative.</p> <p>12 MR. GOLDSTEIN: Fair enough. I<br/>13 thought you were instructing him not to answer. If<br/>14 you're not doing that --</p> <p>15 MR. KOBROFF: You'll know when I<br/>16 instruct him not to answer.</p> <p>17 If you can understand the question.</p> <p>18 A. <b>I think I answered it.</b></p> <p>19 (Record read back as follows:</p> <p>20 Question: Does it say how to pay Penn<br/>21 Lyon in Paragraph 11 of the affidavit?</p> <p>22 Answer: It says specific instructions.<br/>23 To me specific instructions is the detail of how to<br/>24 make the payment.</p> <p>25 Question: But does that say that in</p> | <p>Sheinker - Goldstein 109</p> <p>1 A. I said not that I can recall.</p> <p>2 Q. Were you ever told by anyone at Quantum<br/>3 that you obtained authorization from Westwood to<br/>4 forward money to Penn Lyon?</p> <p>5 A. Well, we insisted that the money go to<br/>6 Penn Lyon and that's when he sent us his wiring<br/>7 instructions. I think that that basically -- he<br/>8 didn't want to do it. He objected to sending the<br/>9 money to Penn Lyon. We insisted upon it, and then<br/>10 he eventually sent us the wiring instructions. At<br/>11 that point I was told that he relented and we are<br/>12 sending the money to Penn Lyon.</p> <p>13 MR. GOLDSTEIN: Move to strike as</p> <p>14 nonresponsive.</p> <p>15 Q. My question was, were you ever told<br/>16 that you were authorized to send money to Penn Lyon<br/>17 by Westwood?</p> <p>18 MR. KOBROFF: "You" meaning him<br/>19 personally or Quantum?</p> <p>20 MR. GOLDSTEIN: No, Quantum.</p> <p>21 MR. KOBROFF: And you're saying his<br/>22 last answer was objectionable?</p> <p>23 A. Can I see the purchase and sale<br/>24 agreement?</p> <p>25 Right there. It says it right there.</p> |

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| <p>Sheinker - Goldstein 110</p> <p>1           MR. KOBROFF: The witness is referring<br/>2 to Defendant's 11, the first page thereof, which<br/>3 says in consideration of the sum and gives a<br/>4 breakdown of the numbers.</p> <p>5           Q. Do you remember being told that you<br/>6 received a separate letter, "you" meaning Quantum,<br/>7 did anyone at Quantum ever tell you, personally,<br/>8 whether Westwood provided you with a -- "you" being<br/>9 Quantum, a separate authorization letter authorizing<br/>10 the money, \$112,168, to be sent to Penn Lyon?</p> <p>11          A. Yes, we were told that he relented and<br/>12 gave us his wiring instructions. Here are a copy of<br/>13 the wiring instructions.</p> <p>14          Q. That's not a letter though. I'm<br/>15 talking about a letter. Were you ever told that a<br/>16 letter --</p> <p>17          A. If that's not a letter, I don't know<br/>18 what a letter is. I mean, that's a written<br/>19 communication. I apologize.</p> <p>20          Q. It's wiring instructions. I --</p> <p>21          A. It's a written communication. It's<br/>22 the same thing as a letter.</p> <p>23          Q. It's a simple question. The question<br/>24 is, did you ever receive a letter, did Quantum ever<br/>25 receive a letter from Warfield or Westwood Design</p> | <p>Sheinker - Goldstein 112</p> <p>1 here?</p> <p>2           MR. GOLDSTEIN: No, I want an answer<br/>3 to my question.</p> <p>4           MR. KOBROFF: The witness has answered<br/>5 the question. You don't seem to like the answer.<br/>6 He says a written communication, he's treating it as<br/>7 a letter. Do you have a problem with that?</p> <p>8           MR. GOLDSTEIN: I'm not denying what<br/>9 he said previously is a written communication.</p> <p>10          Q. I'll ask the question this way. Is<br/>11 there another -- was there another written<br/>12 authorization letter that you were aware of --</p> <p>13          A. I don't believe --</p> <p>14          Q. -- besides the one that you're calling<br/>15 a letter?</p> <p>16          A. I don't believe that there was. I<br/>17 don't recall there being any additional written<br/>18 communication providing the instructions on how to<br/>19 pay Penn Lyon other than these wiring instructions,<br/>20 which were sent to us contemporaneously.</p> <p>21          Q. Is there any reason why Quantum would<br/>22 need authorization from Westwood to pay Penn Lyon?</p> <p>23          MR. KOBROFF: I'll object to form.</p> <p>24          You can answer.</p> <p>25          A. Once again, you're asking me a legal</p>                               |
| <p>Sheinker - Goldstein 111</p> <p>1 authorizing Quantum to make payment to Penn Lyon?</p> <p>2          A. Can you please explain to me what the<br/>3 difference between a written communication and a<br/>4 letter is. I don't know the difference. Does it<br/>5 have to say dear Mr. So and So on it in order for it<br/>6 to be a letter?</p> <p>7          Q. Sure.</p> <p>8          A. In other words, something that has to<br/>9 say, "Dear Mr. Sheinker"?</p> <p>10         Q. Generally a letter is something that<br/>11 says, "Dear Mr. Sheinker."</p> <p>12         A. If it doesn't have that --</p> <p>13         Q. If it's an e-mail correspondence,<br/>14 sometimes it says that, sometimes it doesn't. If<br/>15 it's just a sheet of --</p> <p>16         A. Is an e-mail a letter? Is an e-mail a<br/>17 letter? Because I'm trying to figure this out.<br/>18 Because you said a letter. If it's not an e-mail<br/>19 and if it's a letter, but it doesn't say, "Dear Mr.<br/>20 Sheinker," is that a letter or is that a written<br/>21 communication?</p> <p>22         Q. Would you like to swear me in?</p> <p>23         A. If that's what you'd like to do. I'm<br/>24 trying to understand.</p> <p>25         MR. KOBROFF: Do you want to testify</p>  | <p>Sheinker - Goldstein 113</p> <p>1 question. Is that what you're asking me, a legal<br/>2 opinion. You want my legal opinion, is that what<br/>3 you want?</p> <p>4          Q. I want you to answer the question.</p> <p>5          A. For my legal opinion on something?</p> <p>6          Q. However you understand it. You tell me<br/>7 how you want to answer the question.</p> <p>8          A. Okay. You want to know my opinion as<br/>9 to what?</p> <p>10         Q. I want an answer to the question.</p> <p>11         MR. KOBROFF: He wants to know your<br/>12 opinion, as I understand it, whether Quantum legally<br/>13 needs the authorization from --</p> <p>14         MR. GOLDSTEIN: No, that's not my<br/>15 question. We'll read back the question. I did not<br/>16 say legally. I said whatever the question says.<br/>(Question read back as follows:<br/>Is there any reason why Quantum would<br/>need authorization from Westwood to pay Penn Lyon?)</p> <p>20         A. In my legal opinion, for what it's<br/>21 worth, when two parties enter into a contract, such<br/>22 as a purchase and sale agreement, that if party A<br/>23 refuses to accept the terms and conditions of party<br/>24 B then you don't have a meeting of the minds, so the<br/>25 meeting of the minds in this particular transaction</p> |

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| Sheinker - Goldstein<br>1 was that Westwood had relented and agreed that our<br>2 payment was going to go partially to Penn Lyon,<br>3 partially to Westwood. This was at our insistence.<br>4<br>5 MR. GOLDSTEIN: Move to strike as<br>nonresponsive.  | Sheinker - Goldstein<br>1 in the context of the Pollydore transaction. I<br>2 thought we agreed on that, that that's what we were<br>3 talking about here.<br>4<br>5 MR. GOLDSTEIN: We are. I said, why<br>would you need Westwood's authorization?<br>6<br>7 MR. KOBROFF: And the witness said --<br>8<br>9 MR. GOLDSTEIN: He's not answered the<br>question once. He's answered the question five<br>times, none of which answered the question of, why<br>10 do you need their authorization. And he can --<br>11<br>12 MR. KOBROFF: That was a term of the<br>contract. Did you miss that?<br>13<br>14 THE WITNESS: I said that was part of<br>the meeting of the minds. Did I not say that?<br>15<br>16 Q. Okay. Do you think that you --<br>17 A. In the context of my purchase and sale<br>agreement -- you want to continue, go ahead.<br>18<br>19 Q. No, no, please continue.<br>20 A. In the context of this purchase and<br>sale agreement, we insisted that a portion of this<br>21 money was to go to Penn Lyon, and when they agreed,<br>22 we had a meeting of the minds. If you're asking me<br>23 about authority, these are legal conclusions that I<br>24 really don't know.<br>25 Q. I asked you -- | Sheinker - Goldstein<br>15<br>1 A. I'd have to ask a lawyer.<br>2 Q. I asked you do you know what it means<br>-- do you know what the word "authorization" means?<br>3<br>4 A. Legally?<br>5 Q. No, what the word -- go get the<br>Webster's dictionary, what authorization means.<br>6<br>7 A. Do you have a dictionary here?<br>8 Q. Do you know what it means?<br>9 MR. KOBROFF: Oh, stop. To me you're<br>10 being very argumentative and I'm really allowing you<br>11 to go ahead and do a lot of this, but we're about to<br>12 be making a call to Magistrate Pitman very soon.<br>13<br>14 MR. GOLDSTEIN: If you want to bust<br>the deposition and brief the issue --<br>15<br>16 MR. KOBROFF: I'm not gonna bust the<br>deposition. I'm simply gonna ask advice.<br>17<br>18 Go ask your questions. Just because<br>you don't like the answer --<br>19<br>20 MR. GOLDSTEIN: I asked him a question<br>what does authorization mean.<br>21<br>22 MR. KOBROFF: So this is now a<br>different question that has to do --<br>23<br>24 MR. GOLDSTEIN: He's saying that it<br>calls for a legal conclusion.<br>25<br>MR. KOBROFF: Because you were talking |
| Sheinker - Goldstein<br>15<br>1 A. I'd have to ask a lawyer.<br>2 Q. I asked you do you know what it means<br>-- do you know what the word "authorization" means?<br>3<br>4 A. Legally?<br>5 Q. No, what the word -- go get the<br>Webster's dictionary, what authorization means.<br>6<br>7 A. Do you have a dictionary here?<br>8 Q. Do you know what it means?<br>9 MR. KOBROFF: Oh, stop. To me you're<br>10 being very argumentative and I'm really allowing you<br>11 to go ahead and do a lot of this, but we're about to<br>12 be making a call to Magistrate Pitman very soon.<br>13<br>14 MR. GOLDSTEIN: If you want to bust<br>the deposition and brief the issue --<br>15<br>16 MR. KOBROFF: I'm not gonna bust the<br>deposition. I'm simply gonna ask advice.<br>17<br>18 Go ask your questions. Just because<br>you don't like the answer --<br>19<br>20 MR. GOLDSTEIN: I asked him a question<br>what does authorization mean.<br>21<br>22 MR. KOBROFF: So this is now a<br>different question that has to do --<br>23<br>24 MR. GOLDSTEIN: He's saying that it<br>calls for a legal conclusion.<br>25<br>MR. KOBROFF: Because you were talking | Sheinker - Goldstein<br>117<br>1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25  |   |

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| Sheinker - Goldstein<br>1<br>2<br>3<br>4<br>5<br>6<br>7<br>8<br>9<br>10<br>11<br>12<br>13<br>14<br>15<br>16<br>17<br>18<br>19<br>20<br>21<br>22<br>23<br>24<br>25                                     | Sheinker - Goldstein<br>118<br><p>Q. No, that's not my question. My question is, was there a separate letter?</p> <p>A. That's not your question. I'm giving you my answer.</p> <p>Wherein both parties agree that the money shall be paid as follows: 112,000 to Penn Lyon and 130,000 approximately to Westwood. This was the, at the time of the transaction, the only, to my recollection, the only written reference to that besides the wiring, specific wiring instructions, that were provided upon my demand of Westwood.</p> <p>Q. Is that true before, during, and after the transaction?</p> <p>MR. KOBROFF: Objection to form.</p> <p>A. It's just true. That's just true.</p> <p>Q. So at no time did you ever hear of a separate letter from Westwood authorizing payment of \$112,168.28 to Penn Lyon?</p> <p>A. I'm not aware, as I think I mentioned, I'm not aware of any such additional communication besides the purchase and sale agreement which specifically memorializes the agreement between the parties that 112,000 approximately was going to go to Penn Lyon and \$130,000 was going to go to</p> | Sheinker - Goldstein<br>120<br><p>A. I don't currently recall.</p> <p>Q. Do you know if any representative of Quantum -- when I say representative I mean employee of your company, principal of your company, or attorneys, agents of your company -- ever made an oral demand to Penn Lyon for the return of the 112,168.28?</p> <p>A. I believe that Charles Shea of my law firm made such a demand, but I don't recall. I'd have to ask him.</p> <p>Q. Did you ever make a written demand to Penn Lyon, "you" meaning you personally, make a written demand to Penn Lyon for the return of the monies that your company wired to Penn Lyon?</p> <p>A. Yes.</p> <p>Q. When did you send that written communication to Penn Lyon?</p> <p>MR. KOBROFF: Objection to form.</p> <p>You're implying that there's only one.</p> <p>Q. Were there more than one?</p> <p>MR. GOLDSTEIN: I'm asking him.</p> <p>A. There may be, but I specifically recall at least one.</p> <p>Q. Did you send any letters on Quantum letterhead to Penn Lyon after January 11, 2008?</p> |
| <br><p>Sheinker - Goldstein<br/>1<br/>2<br/>3<br/>4<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p> | <br><p>Sheinker - Goldstein<br/>119<br/><p>Westwood. This was the agreement, and it came part -- as a result of our negotiation and bargain.</p><p>Q. When you talked to Penn Lyon on January 11, you stated earlier that you did not demand return of the money on that occasion. Is that correct?</p><p>A. I said I didn't recall. I believe I said I didn't recall. I'd have to -- I don't recall.</p><p>Q. Do you recall ever making an oral demand to Penn Lyon for the return of the money in connection with the Pollydore project?</p><p>MR. KOBROFF: You being him personally not Quantum?</p><p>MR. GOLDSTEIN: Him personally, since he had the conversation.</p><p>A. You mean aside from the written communication and the communications that my attorney had with Penn Lyon?</p><p>Q. I said oral, oral communications.</p><p>A. You're talking about my oral communications?</p><p>Q. Your verbal communications with --</p><p>A. Limited to me?</p><p>Q. Limited to you.</p></p>  | <br><p>Sheinker - Goldstein<br/>121<br/><p>A. Okay, I sent an e-mail. Is that what you're talking about?</p><p>Q. No, I'm asking you --</p><p>A. Besides an e-mail, I don't recall having sent a written letter.</p><p>Q. Do you know how many written e-mails that you sent to Penn Lyon after January 11, 2008?</p><p>A. I think I said that I recall at least one.</p><p>Q. So when you say at least one, can that mean that there was more than one?</p><p>A. It could mean that.</p><p>Q. What was the sum and substance of your e-mail to Penn Lyon?</p><p>A. Would you prefer that I read you the letter?</p><p>Q. No, I prefer you tell me in your own words.</p><p>A. I told him that -- I told David Reed that now that it appears -- inasmuch as it appears that we have been defrauded, that we demand immediate return of the payment that we made to his firm due to a total lack of consideration for such payment.</p><p>Q. When you use the term "consideration,"</p></p>   |

Sheinker - Goldstein

122

Sheinker - Goldstein

124

1 what do you mean by that?

2       **A. Having been defrauded, there was no**  
 3 **consideration for the transaction.**

4       **Q. Did you have a contract with Penn Lyon?**

5       **A. Once again, is this a legal test or is**  
 6 **this a deposition?**

7       **Q. Did you have any sort of agreement in**  
 8 **any way, shape or form with Penn Lyon, whether it be**  
 9 **contractual or anything else, that caused you to**  
 10 **make the payment to Penn Lyon?**

11           MR. KOBROFF: Objection to form.

12       **A. Did I have a written agreement with**  
 13 **Penn Lyon?**

14           MR. GOLDSTEIN: Read back the  
 15 question, please.

16           (Last question is read back by the  
 17 court reporter.)

18       **A. No, I didn't have a direct contract**  
 19 **with Penn Lyon.**

20       **Q. I asked you what you meant by**  
 21 **consideration. What is your understanding of the**  
 22 **term "consideration" as you used it in the January**  
 23 **15 e-mail?**

24       **A. Penn Lyon did not give us any value**  
 25 **for that advance that we made to Penn Lyon. There**

Sheinker - Goldstein

123

Sheinker - Goldstein

125

1 **was no consideration given.**

2       **Q. But you just testified that there was**  
 3 **no agreement with Penn Lyon.**

4       **A. Right.**

5       **Q. Is that correct?**

6       **A. Right.**

7       **Q. Okay. So for what reason would Penn**  
 8 **Lyon be giving Quantum consideration as you defined**  
 9 **it?**

10           MR. KOBROFF: I'm going to object to  
 11 the form. I mean, are you implying that you can  
 12 only get consideration in a contract?

13           MR. GOLDSTEIN: You're not allowed to  
 14 give speaking objections. I've given you a lot of  
 15 latitude.

16           MR. KOBROFF: I've given you a lot of  
 17 latitude.

18           MR. GOLDSTEIN: I can't ask what it  
 19 says in his e-mail? This is his e-mail.

20           MR. KOBROFF: No, you're asking him a  
 21 different question. Ask him then what he meant by  
 22 consideration. He answered it.

23           MR. GOLDSTEIN: I'll ask him what I  
 24 asked.

25           MR. KOBROFF: Go ahead. If he

1 understands it --

2           MR. GOLDSTEIN: Could you repeat the  
 3 question that I asked.

4           MR. KOBROFF: Note my objection.  
 5           MR. GOLDSTEIN: It's noted.

6           (Last question is read back by the  
 7 court reporter.)

8       **A. There was a lack of consideration not**  
 9 **only from Penn Lyon, but from Westwood. There was**  
 10 **no consideration for our advance here. This was a**  
 11 **voidable transaction. We wanted our money back.**

12 **That's what I meant.**

13           MR. GOLDSTEIN: So it doesn't -- move  
 14 to strike to the extent that it's nonresponsive.

15           MR. KOBROFF: Which part of that was  
 16 not responsive?

17           MR. GOLDSTEIN: My question was not  
 18 answered.

19           MR. KOBROFF: Well, I disagree with  
 20 you. Which part? Specify to me which part wasn't  
 21 responsive.

22           MR. GOLDSTEIN: May I repeat my  
 23 question?

24           MR. KOBROFF: You can certainly repeat  
 25 it.

Sheinker - Goldstein

125

1       **Q. My question is, why did Penn Lyon owe**  
 2 **Quantum any consideration?**

3           MR. KOBROFF: That's a different  
 4 question.

5           MR. GOLDSTEIN: It's substantially  
 6 similar, but I'll have her read back the previous  
 7 question.

8           MR. KOBROFF: No, go with whatever one  
 9 you like.

10           MR. GOLDSTEIN: I'll go with the one  
 11 that I asked.

12           MR. KOBROFF: Okay, he answered that.  
 13           MR. GOLDSTEIN: No, I'd like to read

14 it back so we can have the exact wording.

15           (Last question and answer are read  
 16 back:

17           Question: So for what reason would  
 18 Penn Lyon be giving Quantum consideration as you  
 19 defined it?

20           Answer: There was a lack of  
 21 consideration not only from Penn Lyon, but from  
 22 Westwood. There was no consideration for our  
 23 advance here. This was a voidable transaction. We  
 24 wanted our money back. That's what I meant.)

25       **Q. I'm asking as pertains to Penn Lyon**

Sheinker - Goldstein

126

Sheinker - Goldstein

128

1 only, what consideration did Penn Lyon owe to  
 2 Quantum?  
 3       A. Well, after I sent them \$112,000  
 4 without any consideration, therefore, they owe me  
 5 back the money.

6       Q. Consideration to who? From who?  
 7       A. To either Penn Lyon or to -- there was  
 8 no consideration from either Penn Lyon or from  
 9 Westwood.

10     Q. And I'm saying you're answering in  
 11 circles. You're not answering why Penn Lyon  
 12 specifically owes consideration to Quantum.

13     A. I didn't say that they owe me  
 14 consideration, but now that they have my money for  
 15 which no consideration was given, they have an  
 16 obligation to return the money.

17     Q. Fair enough. No consideration from  
 18 who?

19     A. There has been no consideration given  
 20 to Quantum by either Penn Lyon or Westwood, and  
 21 since Penn Lyon is holding my money I was asking for  
 22 my money back because there has been no  
 23 consideration for the money that I have given.

24     Q. In D-11, which was marked at Ms.  
 25 DeSouza's deposition, the purchase and sale

1 the question for you?

2       A. That's his answer.

3       Q. It's his answer?

4       A. Yeah.

5                   MR. GOLDSTEIN: Would you like to be  
 6 sworn in? I asked you before.

7                   MR. KOBROFF: Only if you're sworn in  
 8 as well.

9                   MR. GOLDSTEIN: If you don't like the  
 10 question, that doesn't mean --

11                  MR. KOBROFF: Look, I don't mind the  
 12 question. What I mind is your continuously arguing  
 13 with the witness. Okay, you don't like the  
 14 witness's answer and you're continuously arguing  
 15 with him. This is beginning to annoy me.

16                  MR. GOLDSTEIN: I'd have to say that  
 17 it's quite the opposite. I believe the witness is  
 18 constantly arguing with me, continuously questioning  
 19 me, and I believe that I'm only trying to elicit  
 20 responses to certain questions.

21                  MR. KOBROFF: Go. Go. We'll do it  
 22 again, even though I believe the witness has  
 23 answered your question several times.

24                  MR. GOLDSTEIN: We'll agree to  
 25 disagree on that.

Sheinker - Goldstein

127

Sheinker - Goldstein

129

1 agreement, is there any reference to the Penn Lyon  
 2 invoice in there?

3                  MR. KOBROFF: The document speaks for  
 4 itself. Thank you. Would you like to direct the  
 5 witness's attention to any part of that document?

6                  MR. GOLDSTEIN: No.

7                  MR. KOBROFF: Okay. Thank you. Then  
 8 the document speaks for itself. Next question.

9                  MR. GOLDSTEIN: Are you detecting him  
 10 not to answer?

11                  MR. KOBROFF: It's answered.

12                  MR. GOLDSTEIN: You answered it. We  
 13 didn't swear you in.

14                  MR. KOBROFF: You asked him whether  
 15 there was anything in here regarding the Penn Lyon  
 16 invoice.

17                  MR. GOLDSTEIN: We haven't sworn you  
 18 in.

19                  MR. KOBROFF: The witness is pointing  
 20 to the fact that the document shows on the first  
 21 page that 112,168 is payable to Penn Lyon. The  
 22 witness is also referring to Exhibit A, which says  
 23 that as part of this agreement, we're talking about  
 24 the Pollydore project, etcetera.

25                  Q. Is that your answer or is he answering

1                  MR. KOBROFF: Go ahead.

2        Q. Do you have a receipt of the wire  
 3 transfer to Penn Lyon?

4        A. From Penn Lyon?

5        Q. Yeah.

6        A. Did Penn Lyon ever send me a receipt,  
 7 is that your question?

8        Q. No, did your bank ever give you a  
 9 receipt for the wire transfer?

10      A. Yes.

11      Q. On the wire transfer to Penn Lyon, did  
 12 Quantum denote the invoice, the specific invoice  
 13 number to Penn Lyon that the payment was for?

14      A. On the wire transfer instructions?

15      Q. No, no, on the wire transfer to Penn  
 16 Lyon.

17      A. No, but the wire transfer instructions  
 18 did contain the transaction number, which referenced  
 19 the purchase and sale agreement in question.

20      Q. The transaction to the purchase and  
 21 sale agreement?

22      A. Yes.

23      Q. But did it refer to the Penn Lyon  
 24 specific invoice that you were sending money for?

25      MR. KOBROFF: Objection. You're

Sheinker - Goldstein 130

1 asking him if the wire confirmation that he received  
2 back from his bank, is that what you're asking him?  
3 MR. GOLDSTEIN: You're correct. I was  
4 not specific. He was talking about the wire  
5 instructions and so I'm referring to the wire  
6 instructions.  
7 A. My wiring instructions contained a  
8 transaction number, which relates to a purchase and  
9 sale agreement.  
10 Q. Okay. But did it --  
11 A. Which is the particular purchase and  
12 sale agreement.  
13 Q. Did it refer to the Penn Lyon invoice?  
14 A. Yes, inasmuch as the Penn Lyon is part  
15 of -- it's identified on the purchase and sale  
16 agreement.  
17 Q. Is there an invoice number that was  
18 referred to in the wiring instructions to Penn Lyon?  
19 A. As I mentioned, there's a transaction  
20 number which relates back to the purchase and sale  
21 agreement, which contains the requirement that we  
22 imposed that money be sent to Penn Lyon.  
23 Q. I understand you've answered that  
24 already and I'll move to strike as nonresponsive.  
25 My question is, simple question, does

Sheinker - Goldstein 132

1 document from Sterling National Bank, is marked for  
2 identification.)  
3 Q. Do you recognize what's been marked as  
4 Penn Lyon 2?  
5 A. Yeah.  
6 Q. What is this document?  
7 A. It's part of our bank statement.  
8 Q. What is referenced in Penn Lyon 2?  
9 A. There's a lot of things referenced in  
10 this. What specifically are you talking about?  
11 Q. The transactions marked at the bottom  
12 of the page.  
13 A. Those are referring to two wire  
14 transfers, one is to Penn Lyon and one is to Design  
15 Build, Westwood Design/Build.  
16 Q. Does this document reference any Penn  
17 Lyon invoice number?  
18 A. No, not in this document.  
19 Q. Does this document reference the  
20 Pollydore project?  
21 A. By inference only.  
22 Q. This is a document that your company  
23 receives?  
24 A. Yeah.  
25 Q. I'm going to show you what's been -- GF

Sheinker - Goldstein 131

1 It refer to any Penn Lyon Invoice, not the  
2 agreement, not the agreement, the Penn Lyon invoice?  
3 MR. KOBROFF: I would ask you to show  
4 the witness the document you are referring to and  
5 we'll see what it says.  
6 MR. GOLDSTEIN: Sure. He can ask me  
7 to look at it and I'll let him.  
8 MR. KOBROFF: Okay, I'm asking you to  
9 show it to him so we don't keep wasting our time.  
10 MR. GOLDSTEIN: I don't have the exact  
11 exhibit number, if you've got it over there, but I'm  
12 referring to this document. D-12.  
13 MR. KOBROFF: His attention is  
14 directed to page 2 of Exhibit D-12, and the question  
15 as I understand it is, is a Penn Lyon invoice number  
16 set forth on this document?  
17 MR. GOLDSTEIN: Correct.  
18 THE WITNESS: I don't see an invoice  
19 number on this document.  
20 MR. GOLDSTEIN: I don't know if this  
21 was marked at the last one. Was this?  
22 MR. DOHERTY: I don't think so.  
23 MR. GOLDSTEIN: May I have this marked  
24 as Penn Lyon 2.  
25 (Exhibit Penn Lyon-2, one-page

Sheinker - Goldstein 133

1 130. This is stapled together. I don't want to rip  
2 it apart.  
3 MR. GOLDSTEIN: Can I mark that as  
4 Penn Lyon 3.  
5 (Exhibit Penn Lyon 3, one-page  
6 check/wire request, is marked for identification.)  
7 Q. Do you recognize that document?  
8 A. The form I recognize.  
9 Q. Did you prepare this document?  
10 A. No.  
11 Q. Nothing further with that document.  
12 Who prepared that document, sorry, if  
13 you know?  
14 A. Someone in my office.  
15 Q. Is your answer you don't know?  
16 A. I don't know specifically who prepared  
17 that document.  
18 MR. GOLDSTEIN: I need to review my  
19 notes. I've gone a little bit off back and forth.  
20 MR. DOHERTY: I have a couple  
21 follow-up that I can fill the time while you're  
22 looking at your notes.  
23 MR. KOBROFF: Sure, back to you.  
24 EXAMINATION BY MR. DOHERTY:  
25 Q. Mr. Sheinker, thanks for your time. I

Sheinker - Doherty

134

Sheinker - Doherty

136

1 have a couple follow-up questions while Penn Lyon's  
 2 counsel is reviewing his notes.

3 You had mentioned earlier that you or  
 4 your brother-in-law would spot-check transactions.  
 5 Is that correct?

6 When I say "transactions" I mean  
 7 Quantum transactions, not any old transaction, I  
 8 mean in your business.

9 **A. Me and my brother-in-law can sign the  
 10 wires. That's the final authorization to let the  
 11 money go and execute the transaction, and we will  
 12 spot-check the supporting documents.**

13 **Q. Did you spot-check any of the  
 14 supporting documents in any of the Westwood  
 15 transactions?**

16 **A. I don't believe so.**

17 **Q. And in particular the Pollydore  
 18 transaction.**

19 **A. I don't believe so.**

20 **Q. Do you know if your brother-in-law  
 21 spot-checked any of the Westwood transactions?**

22 **A. I don't know.**

23 **Q. Would there be any notation made on a  
 24 file if you or your brother-in-law spot-checked the  
 25 underlying transaction documents?**

1 was telling National City in order to get a

2 signature on the estoppel form?

3 **THE WITNESS:** Could you repeat the  
 4 question.

5 (Last question is read back by the  
 6 court reporter.)

7 **A. No.**

8 **Q. To your knowledge, was National City  
 9 made aware by Quantum that money would be wired by  
 10 Quantum to Westwood in reliance on what you call the  
 11 estoppel certificate?**

12 **MR. KOBROFF:** Can you read that back,  
 13 (Last question is read back by the

14 court reporter.)

15 **A. Repeat the question.**

16 **MR. DOHERTY:** Before you answer that  
 17 question, let me just change the word "wired" to  
 18 "sent," money sent, so that we're not just limiting  
 19 it to a wire.

20 **THE WITNESS:** Repeat the question  
 21 again.

22 (Last two questions are read back by  
 23 the court reporter.)

24 **A. I think that the estoppel certificate  
 25 makes that clear.**

Sheinker - Doherty

135

Sheinker - Doherty

137

1 **A. Probably not.**

2 **Q. As of October, November, and December  
 3 2007, is it fair to say that Ms. DeSouza was a new  
 4 employee?**

5 **A. Relatively.**

6 **Q. Was anybody spot-checking the  
 7 transactions that Ms. DeSouza was working on? And I  
 8 mean during that time frame October, November,  
 9 December 2007.**

10 **A. Shelley Simmonds, I would believe that  
 11 she was spot-checking her transactions. She was her  
 12 direct supervisor.**

13 **Q. Do you know for a fact that Ms.  
 14 Simmonds was spot-checking, or are you just kind of  
 15 assuming that she would have as the direct  
 16 supervisor?**

17 **A. The latter.**

18 **Q. In any of your discussions with Michael  
 19 Conrad, including when he was physically present in  
 20 your former conference room, did he tell you what he  
 21 was explaining to National City in order to get a  
 22 signature on what you call the estoppel certificate?**

23 **A. No.**

24 **Q. Have you been told by any of your  
 25 employees at Quantum if they're aware of what Conrad**

1 **Q. So your answer to that question is yes  
 2 or no?**

3 **A. If you're asking if I'm aware of all  
 4 the conversations that other people in my office  
 5 have had with representatives of Westwood, the  
 6 answer is I'm not aware of all -- with  
 7 representatives, excuse me, of the bank, National  
 8 City, I'm not aware of all those communications.  
 9 And, furthermore, the estoppel certificate is pretty  
 10 clear that the mere fact that it's an estoppel  
 11 certificate is indicative of the fact that we're  
 12 relying upon this document in becoming the assignee  
 13 of payment of the captioned invoices.**

14 **Q. You're looking at a document. Can you  
 15 tell me what exhibit number you're looking at?**

16 **A. D-9.**

17 **Q. Can you point to me in D-9 what  
 18 language you believe conveys the information to  
 19 National City that would make it aware that Quantum  
 20 would be sending money to Westwood in reliance on  
 21 that document?**

22 **A. This is a standard assignment for a  
 23 factor, which basically is notification of the sale  
 24 and assignment of the invoice.**

25 **THE WITNESS:** Do you have a copy of

|  |   |
|--|---|
| <p>Sheinker - Doherty 138</p> <p>1 the invoice, Bernie?</p> <p>2 MR. GOLDSTEIN: Here's a copy. It's</p> <p>3 not a marked one.</p> <p>4 <b>A. The invoice has been sold to Quantum</b></p> <p>5 <b>Corporate Funding.</b></p> <p>6 Q. You're not referring to the estoppel</p> <p>7 certificate, you're referring to another document?</p> <p>8 <b>A. The document that went with it, which</b></p> <p>9 <b>is the invoice, which has been stamped as having</b></p> <p>10 <b>been sold, which by definition implies that a</b></p> <p>11 <b>payment is made.</b></p> <p>12 Q. Was National City made aware by Quantum</p> <p>13 of the amount that Quantum would be sending to</p> <p>14 Westwood in reliance upon what you call the estoppel</p> <p>15 certificate?</p> <p>16 <b>A. Not that I'm aware of.</b></p> <p>17 Q. Was National City made aware by Quantum</p> <p>18 of the fact that money would be sent to Penn Lyon</p> <p>19 based on the signing of any estoppel certificate?</p> <p>20 <b>A. Not that I'm aware of.</b></p> <p>21 Q. Concerning your insistence on having</p> <p>22 part of the wire transfer to Westwood on the</p> <p>23 Polydore project, that part of that money would go</p> <p>24 to Penn Lyon, did Quantum and Westwood reach some</p> <p>25 kind of agreement that that payment to be sent to</p>   | <p>Sheinker - Doherty 140</p> <p>1 fraud besides issuing what you call an estoppel</p> <p>2 certificate?</p> <p>3 MR. KOBROFF: Objection to form.</p> <p>4 <b>A. In each instance or just general?</b></p> <p>5 Q. In general.</p> <p>6 <b>A. We have a whole bunch of tools. The</b></p> <p>7 <b>estoppel certificate is the most severe of all forms</b></p> <p>8 <b>that we use, and it -- there are times where we go</b></p> <p>9 <b>without estoppel certificates where we have less</b></p> <p>10 <b>riskier transactions, as I mentioned to you where</b></p> <p>11 <b>you've got wide diversification, where you've got --</b></p> <p>12 <b>for example, if I had Bill Gates as my client I</b></p> <p>13 <b>don't think I would need the estoppel certificate</b></p> <p>14 <b>from First National City Bank. So there are</b></p> <p>15 <b>definitely different standards for different</b></p> <p>16 <b>transactions.</b></p> <p>17 Q. Could you describe some of the other</p> <p>18 tools that you use to ferret out fraud?</p> <p>19 <b>A. Phone verification, just notification,</b></p> <p>20 <b>stamping invoices and sending them out, collection</b></p> <p>21 <b>review, you know, the rate of collection, estoppel</b></p> <p>22 <b>certificates, on rare occasion we have audits of the</b></p> <p>23 <b>client's books. On rare occasion in the past we've</b></p> <p>24 <b>looked at bank deposits from the client's books. So</b></p> <p>25 <b>there are other methods that we employ. Credit</b></p> |
| <p>Sheinker - Doherty 139</p> <p>1 Penn Lyon would relate to a modular home intended</p> <p>2 for the Polydores, or would it be for any debt that</p> <p>3 happened to be owed by Westwood to Penn Lyon?</p> <p>4 <b>A. It was for the Polydiores.</b></p> <p>5 Q. And that was an agreement that Quantum</p> <p>6 had with Westwood?</p> <p>7 <b>A. Yes.</b></p> <p>8 Q. Earlier I was asking you about if you</p> <p>9 could estimate how many transactions per year, and I</p> <p>10 think you gave me an estimate of transactions per</p> <p>11 week, and I asked you how many -- what percentage</p> <p>12 would be marked by fraud I think is how I phrased</p> <p>13 it, and you gave an answer. Just so I'm clear, out</p> <p>14 of the number you do per week, how many wind up</p> <p>15 going bad, meaning Quantum doesn't get paid, for any</p> <p>16 reason, including fraud?</p> <p>17 <b>A. The total number, our average typical</b></p> <p>18 <b>annual loss for any reason, that includes fraud, is</b></p> <p>19 <b>less -- is between one and one half percent of</b></p> <p>20 <b>invoices purchased.</b></p> <p>21 Q. When I asked you earlier about</p> <p>22 Quantum's process for trying to ferret out fraud, I</p> <p>23 think you identified the estoppel certificate but I</p> <p>24 may have moved on before I let you finish answering.</p> <p>25 Are there other things that Quantum does to detect</p> | <p>Sheinker - Doherty 141</p> <p>1 reports, personal credit reports, etcetera. It's</p> <p>2 just a wide range of tools that you use. That would</p> <p>3 be like asking an attorney what does he use to</p> <p>4 develop a strategy for defending or prosecuting a</p> <p>5 lawsuit. There's a whole host of tools that you</p> <p>6 employ, and sometimes you use certain tools and</p> <p>7 sometimes you use other tools.</p> <p>8 Q. Well, I don't know your business.</p> <p>9 That's why I'm asking.</p> <p>10 What tools were used in assessing</p> <p>11 whether to proceed with the transactions with</p> <p>12 Westwood?</p> <p>13 <b>A. The estoppel certificate, which is the</b></p> <p>14 <b>most severe form of verification that we can get.</b></p> <p>15 <b>We employ that when the transaction is highly</b></p> <p>16 <b>concentrated with one account and our -- in</b></p> <p>17 <b>instances such as this.</b></p> <p>18 Q. Were any of the other tools that you</p> <p>19 described used by Quantum in assessing whether to</p> <p>20 proceed with the Westwood transactions?</p> <p>21 <b>A. As I mentioned, this is the most</b></p> <p>22 <b>severe tool, so to take a -- other measures, which</b></p> <p>23 <b>really this is the most significant.</b></p> <p>24 MR. KOBROFF: The witness pointed to</p> <p>25 the estoppel certificate which had been previously</p>  |

Sheinker - Doherty 142

1 marked as part of Defendant's 9.

2       A. In the pyramid it would be at the top  
3 of the pyramid, so something down here, you may get  
4 it, but at the end of the day if you get what's at  
5 the top of the pyramid, it's superior to all  
6 other -- an estoppel certificate from a creditworthy  
7 account debtor is superior to all other forms of  
8 verification.

9       Q. Did Quantum try any of the other tools  
10 at the lower part of the pyramid that you're  
11 describing before going to the estoppel certificate?

12      A. I believe we had some credit report  
13 information I think on Warfield. I'm not sure.

14      Q. Do you remember whether any other tools  
15 were used in assessing the Westwood transactions  
16 besides the credit report and what you described at  
17 the top of the pyramid.

18      A. Well, one risk-mitigating factor that  
19 we employed here was sending the payment on the  
20 Polydore directly to Penn Lyon. That was a tool,  
21 not a verification tool, but a risk-mitigation tool  
22 that we employed.

23      Q. And you employed that on the Polydore  
24 transaction because you had concerns about whether  
25 Westwood could be trusted to distribute the money it

Sheinker - Doherty 144

1       A. It wasn't so much about Westwood; it  
2 was about the idea that this will mitigate our risks  
3 and that our client Westwood should have no  
4 objection, so therefore we -- we decided to employ  
5 that tool.

6       Q. What was the risk that you perceived if  
7 you didn't send a wire transfer directly to Penn  
8 Lyon?

9       A. We wanted to make sure that Penn Lyon,  
10 because we were told that they were going to be  
11 putting the house, the final erection of the house  
12 up, so we wanted to make sure that they were going  
13 to do it, not that our payment hereunder was  
14 conditioned upon that, but rather than ending up  
15 with somebody like -- you know, rather than having  
16 National City unhappy about making a payment, we  
17 were trying to make sure that everything went  
18 smoothly, and that would include making sure that  
19 the house eventually got up and everybody was happy.  
20 We could have rightfully not insisted that the money  
21 go to Penn Lyon and in the end the house may never  
22 have been erected and then people at National City  
23 might be less inclined to want to send the payment  
24 despite the fact that they were legally obligated to  
25 do so anyway. So this was just a risk-mitigation

Sheinker - Doherty 143

1 received from Quantum --

2           MR. KOBROFF: Objection to form.

3           MR. GOLDSTEIN: Objection.

4        Q. -- in an appropriate fashion?

5           MR. GOLDSTEIN: We agree on something.

6           THE WITNESS: Should I answer?

7           MR. KOBROFF: If you can answer. If  
8 you want the question read back, we'll read it back.

9 I object to the form.

10          MR. GOLDSTEIN: As did I.

11        A. If I trusted my clients I wouldn't  
12 need to do any verification. The whole purpose of  
13 the verification is to verify, so your question  
14 is -- well, do you want to ask me the question  
15 again?

16        Q. Maybe I'll ask it a little bit  
17 different, although I'm happy to see I had counsel  
18 agree on one thing today so I feel like I brought a  
19 little bit of peace to the table.

20           What was it about Westwood or what was  
21 it about Quantum's view of Westwood as of late  
22 December of 2007 that made you feel that it was  
23 important to have Quantum send payment directly to  
24 Penn Lyon rather than sending the entire  
25 distribution to Westwood?

Sheinker - Goldstein 145

1       factor.

2           MR. DOHERTY: Thank you.

3           MR. GOLDSTEIN: Just a couple  
4 questions.

5 EXAMINATION BY MR. GOLDSTEIN:

6        Q. The conversation that you were just  
7 referring to about employing the risk-mitigation  
8 factor, when was this?

9        A. What date?

10       Q. Yeah.

11       A. It was on or about the date of the  
12 advance. It was the same day as the advance.

13       Q. December 21, is it?

14       A. Do you have the wire instruction here?

15 Yeah, December 21.

16       Q. Who was present during the  
17 conversation?

18       A. What conversation?

19       Q. The one that you had to --

20       A. I told Toby to tell what's his name,  
21 Conrad, that that was a quid pro quo to our next  
22 advance.

23       Q. So you didn't personally have the  
24 conversation with Westwood?

25       A. No.

Sheinker - Goldstein

146

148

1 Q. Toby did?  
 2 A. Yes.  
 3 Q. Did Toby tell you how the conversation  
 4 went?  
 5 A. He wasn't happy.  
 6 Q. Who wasn't happy?  
 7 A. Conrad.  
 8 Q. Did she tell you why he wasn't happy?  
 9 A. He wanted the money to go to him.  
 10 Q. When you told Toby to have this

11 conversation with Mr. Conrad, what were your  
 12 instructions to her to convey to him?

13 A. Tell him that the payment -- I'm  
 14 requiring that the payment go to Penn Lyon.

15 MR. GOLDSTEIN: Nothing further.

16 MR. DOHERTY: I'm done subject to if

17 there's something in the interrogatory answers, as I  
 18 stated earlier.

19 MR. GOLDSTEIN: Likewise.

20 MR. KOBROFF: I have no questions.

21 (Deposition concluded at 2:25 p.m.)

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147

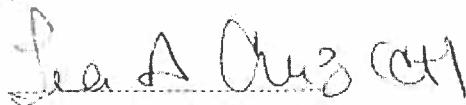
149

#### CERTIFICATE

1 I, LEA A. CRUZ, a Certified Court Reporter  
 2 and Registered Professional Reporter, DO HEREBY  
 3 CERTIFY that, prior to the commencement of the  
 4 examination, CRAIG SHEINKER was duly sworn by me to  
 5 testify the truth, the whole truth, and nothing but  
 6 the truth.

7 I DO FURTHER CERTIFY that the foregoing is a  
 8 true and accurate transcript of the testimony as  
 9 taken stenographically by and before me at the time  
 10 and place and on the date hereinbefore set forth.

11 I DO FURTHER CERTIFY that I am neither a  
 12 relative nor employee nor attorney nor counsel of  
 13 any of the parties to this action and that I am  
 14 neither a relative nor employee of such attorney or  
 15 counsel and that I am not financially interested in  
 16 this action.



LEA A. CRUZ, C.C.R. 30X100164300

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1 UNITED STATES DISTRICT COURT  
 2 SOUTHERN DISTRICT OF NEW YORK

4 QUANTUM CORPORATE FUNDING, Civil Action No.  
 5 LTD., 08CV00539(LAK)(HBP)

6 Plaintiff(s),

7 ~v~ DEPOSITION UPON  
 8 ORAL EXAMINATION  
 9 OF  
 10 CRAIG SHEINKER

11 NATIONAL CITY MORTGAGE, INC.,  
 12 Third-Party Plaintiff(s),

13 ~v~  
 14 MICHAEL CONRAD a/k/a MICHAEL  
 15 CONRAD BROWN,  
 16 Third-Party Defendant(s).

17  
 18  
 19 I, CRAIG SHEINKER, hereby certify that I have  
 20 read the transcript of my testimony taken under oath  
 21 on the 8th day of August, 2008, and that the  
 22 transcript is a true and complete record of the  
 23 deposition as given by me, except as noted in the  
 24 errata sheet.

25 CRAIG SHEINKER

#### ERRATA SHEET

| 3 PAGE/LINE NO. | 4 CORRECTION |
|-----------------|--------------|
| 5               |              |
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